Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

DANIEL LEAHY, et al.,

Petitioners,

vs.

CITY OF CHICAGO,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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18 pp

QUESTION PRESENTED

Do employees have a right to a determination of whether a meal period portion of an 8½ hour work shift is compensable under the Fair Labor Standard Act (FLSA) or is a standard overtime pay provision in a collective bargaining agreement dispositive of such right as a matter of law.

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PETITION FOR WRIT OF CERTIORARI

Daniel Leahy, and over 7,000 Chicago Police Officers[1] respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (referred to herein as "Leahy Appeal II") appears at Appendix A to the petition and is reported at 96 F.3d 228 (1996).

The second opinion of the district court (referred to herein as "Leahy II") appears at Appendix B to the petition and does not appear to have been officially reported.

The first opinion of the Court of Appeals (referred to herein as "Leahy Appeal I") appears at Appendix C and is reported at 994 F.2d 333 (1993).

The first opinion of the district court (referred to herein as "Leahy I") appears at Appendix D to the petition and is reported at 785 F.Supp. 726 (N.D. Ill. 1992).

JURISDICTION

The Court of Appeals entered its judgment and order on September 11, 1996. Plaintiffs' Petition For Rehearing With Suggestion For Rehearing en Banc was denied on November 7, 1996. This Court has jurisdiction under 28 U.S.C. Section 1254(1).

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[1] The names of the over 7,000 individual petitioners are set forth in Appendix F.

STATUTORY PROVISION INVOLVED

Section 7(a) of the Fair Labor Standards Act, 29 U.S.C. Section 207(a), provides, in pertinent part, that covered employees shall not be required to work hours in excess of the statutory maximum without payment of compensation at an overtime rate established by law. The text of the section, and other relevant sections as well as the principal regulation relating thereto are set forth at Appendix E.

STATEMENT

Daniel Leahy and twenty three other Chicago police officers initiated this case, claiming that the 30 minute meal period included in their 8½ hour tour of duty is compensable time under the FLSA. More than 7,000 Chicago police officers agreed and "opted in" to these consolidated cases. The officers contend that the multitude of restrictions imposed on them by the written rules and regulations of the police department, including the requirement that they be in uniform during meals with their radios on and with them, benefits the City by having a police presence in the community and a constant "ready force" available as needed. The officers further contend that the inability to always obtain a meal period, the frequent interruptions of meal periods for various duty reasons and for various periods of time, the absence of any established procedure for scheduling meal periods or obtaining compensation for lost or interrupted meal periods, and the policy of the department to discourage and view with disfavor applications for overtime pay related to the 30 minute meal period, are all circumstances creating a fact question as to the compensability of the 30 minute meal period under the FLSA.

In *Leahy Appeal I*, the court found that the collective bargaining agreement between the union and the City was not controlling of the FLSA issue, and chose to follow the rule announced by the 10th Circuit Court of Appeals in *Lamon v. City of Shawnee*, 972 F.2d 1145 (10th Cir. 1992), which held that the controlling fact issue as to compensability is whether the 30 minute meal period is spent "predominantly for the benefit of the employer". In *Leahy Appeal II*, the court affirmed the district court's order granting summary judgment for the defendant City albeit on grounds other than those raised in the motion or relied upon by the district court, holding that the overtime pay provision of the collective bargaining agreement between the union and the City was dispositive of any FLSA rights the officers claimed to have with respect to the 30 minute meal period, as a matter of law.

PROCEEDINGS BELOW

A. Leahy Appeal I

In *Leahy I*, the district court granted defendant's motion for judgment on the pleadings. The court of appeals reversed. The majority opinion rejected defendant's contention that an agreement between the City and the Fraternal Order of Police (FOP) was dispositive of plaintiffs' claim.[2] The case was remanded for further factual

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[2] The court said:

> . . . Although a fact finder might consider (a collective bargaining agreement) as one among many factors in determining whether the officers were completely relieved of duty, it certainly does not outright preclude the officers' claim. 994 F.2d 339, n.11; Appendix C-13, n.11.

development. Judge Barbara Crabb, sitting by designation, concurred in the determination that judgment on the pleadings was error, and stated:

> The frequency of interruptions during meal periods may operate to impose a state of readiness so like that of actual patrol work as to warrant compensation during *all* meal periods. Such a state of readiness may result from the frequency of dispatcher-initiated calls, or again, departmental regulations may so constrain an officer's choice of location and activities during meal periods as to require in effect that the officer perform services commensurate with those of an officer who walks a beat. In either case, officers would not be 'completely relieved from duty' within the meaning of the FLSA.

994 F.2d at 340; Appendix C-16.

Judge Bauer dissented, contending that the collective bargaining agreement was controlling and satisfied FLSA scrutiny as a matter of law. Judge Bauer stated "There is no need for further factual development of the officers' case" and the docket should not be "cluttered with their case when the officers' complaints are doomed". 994 F.2d at 345; Appendix C-25.

B. Leahy Appeal II

After remand, the City filed a motion for summary judgment based, not on the merits of the case, but on two affirmative defenses – (1) that the collective bargaining agreement constituted an express agreement that the 30 minute meal period ought not be compensable working time for the purposes of the FLSA and (2) that 29 U.S.C. Section 259(a) (the Portal Act) operates as a total bar to the plaintiffs' action. Discovery was then conducted solely

on the two issues raised. Plaintiffs' brief in opposition dealt only with the issues raised in the motion and not with the ultimate merits of the case.

The district court rejected both of the affirmative defenses raised in defendant's motion. It found that the collective bargaining agreement "fails to include any agreement regarding meal periods." (Appendix B-11) The district court then, without notice that it intended to use defendant's limited motion for summary judgment as a vehicle for deciding the ultimate issue of the case, entered summary judgment for the defendant on the merits.[3]

Defendant, in its *Leahy Appeal II* brief, raised only the issue of the collective bargaining agreement. The issue, however, was revised. Instead of contending that there was an express agreement between the City and the FOP excluding the 30 minute meal period from working time for FLSA purposes (which theory was rejected by the *Leahy Appeal I* opinion and *Leahy II*), the City now embraced the rationale of Judge Bauer's dissent in *Leahy Appeal I* that the provision in the collective bargaining agreement for compensating officers at overtime rates whenever they worked in excess of eight hours a day was dispositive of their claim that the 30 minute meal period was compensable under the FLSA.

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[3] The district court's ruling was, in effect, the same as its earlier ruling which was reversed in *Leahy Appeal I*, because discovery on the merits was incomplete. While the district court prefaced its grant of summary judgment with the statement "Discovery is complete", the defendant conceded that was not so. 96 F.3d at 231; Appendix A-4.

With the replacement of Judge Crabb, Judge Bauer, the dissenter in *Leahy Appeal I*, was able, in *Leahy Appeal II*, to make his dissent prophecy come to pass, despite the doctrine of the "law of the case". In total disregard of the earlier majority opinion on the very same issue, Judge Bauer, on behalf of a bitterly divided court, found the fact that the collective bargaining agreement between the City and the FOP provided that officers could receive overtime pay for hours worked in excess of eight per day, precluded compensability for the 30 minute meal period under the FLSA as a matter of law.

Judge Cudahy, who wrote for the majority in *Leahy Appeal I*, was now the dissenter in *Leahy Appeal II*, expressing this concern:

> . . . The case and the issue to be resolved have not changed in any respect, but the panel has changed. And this is decisive. As a result the law seems to have changed without so much as a nod of recognition by the new majority to the law of the case doctrine, which has been flagrantly violated here. This in itself is more than enough to compel rejection of the (new) majority opinion. 96 F.3d at 232; Appendix A-8.

REASONS FOR GRANTING THE PETITION

The decision in *Leahy Appeal II* is in direct conflict with earlier decisions of this Court, conflicts with the decision of the Tenth Circuit Court of Appeals which was relied upon by the earlier panel decision in *Leahy Appeal I*, and totally ignores the doctrine of the law of the case as established by the same court in *Leahy Appeal I*. Moreover, the decision below is erroneous, and the issue that it addresses is of widespread importance.

A. The Court of Appeals' Decision Ignores And Conflicts With Earlier Decision Of This Court.

The ruling of the Court of Appeals is directly in conflict with the decision of this Court in *Barrentine v. Arkansas Freight*, 450 U.S. 728 (1981). In *Barrentine*, employees claimed that certain time was working time under their bargaining agreement and under the FLSA. The collective bargaining claim was taken to arbitration and the union and its members lost. They then brought suit under the FLSA. The employer claimed that the fact that the time in controversy had been found in arbitration not to be working time under the collective bargaining agreement meant that it could not be working time for FLSA purposes. This Court disagreed, finding that the fact the employees "lost" under the collective bargaining agreement did not mean they had "lost" under the FLSA:

> In sum, the FLSA rights petitioners seek to assert in this action are independent of the collective bargaining process. They devolve on the petitioners as individual workers—not as members of a collective organization. They are not waiveable. 450 U.S. at 345.

The majority opinion in *Leahy Appeal II* is not only in conflict with *Barrentine*, but it appears the majority did not even attempt to distinguish that case. *Barrentine* is not mentioned anywhere in the opinion.

The majority opinion did not engage in any independent scrutiny of the circumstances surrounding the 30 minute meal period to determine whether such time was compensable under the Act. The test of compensability has been described by this Court in *Skidmore v. Swift & Co.*, 323 U.S. 124 (1944) as follows:

> Whether in a concrete case such time ("on call" or "sleep" time beyond the 8½ hour work day) falls within or without the Act is a question of fact to be resolved by appropriate findings of the trial court . . . . This involves scrutiny and construction of the agreements between the particular parties, appraisal of their practical construction of the working agreement by conduct, *consideration of the nature of the service, and its relation to the waiting time, and all of the surrounding circumstances.* (emphasis supplied)

323 U.S. at 135.

In *Leahy II*, the district court found that the collective bargaining agreement "failed to include any agreement regarding the meal periods." (Appendix B-11) The record contains no credible evidence that the City ever considered the effect of the FLSA requirements on the 30 minute meal period in negotiating with the FOP. That finding of the district court was not challenged or even referred to in the City's brief to the Court of Appeals nor was it challenged or referred to in that court's opinion. Thus, the petitioners' contention is not undermined by the "scrutiny and construction of the agreement" element referred to in *Skidmore*.

It should be made clear that the test for determining whether time is compensable under the FLSA, as described in *Skidmore* and *Barrentine*, is a threshold factual issue to be addressed in cases such as those involving "sleep time", "on call" and police officers' meal period portion of their tour of duty (which is akin in certain respects to an "on call" case). These cases involve a wide variety of restrictions in time, location, activity and employer policies, along with a variety of relevant surrounding circumstances. Some combinations of facts may bring the time to the level of compensability—others

may not. Only when the "time" has been determined to be non-compensable under the FLSA, do the overtime pay provisions of a collective bargaining agreement come into play. If the "time" is compensable, it is all compensable. If it is not compensable, then only that portion of the time actually worked is compensable as overtime.

Despite years of litigation and two appeals, the threshold factual issue has never been properly addressed in this case. The court in *Leahy Appeal I* remanded the case so that the facts could be developed through discovery preliminary to a factual determination of whether the 30 minute meal period was predominantly for the benefit of the employer. The district court in *Leahy II* entered summary judgment for the City on the merits, when the issue was not briefed or argued and discovery was incomplete, and without any hint of its intention to consider the ultimate issue. The majority in *Leahy Appeal II* was fully aware that the district court's ruling on the merits was erroneous, when it stated:

> The plaintiffs argue that the district court improperly granted summary judgment on the merits because discovery was not complete on the issue of the frequency and duration of interruptions during officers' meal periods. *The City concedes this, and therefore does not defend the district court's reasoning.*[4] (emphasis added) 96 F.3d at 231; Appendix A-4.

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[4] Plaintiffs' *Leahy Appeal II* reply brief described the discovery remaining as follows:

> The fact is that discovery was incomplete on all aspects of the controlling issue in the case, including the non-payment for interrupted or missed meal periods, the inability to make up for missed or interrupted meal periods, the

(continued...)

Thus, the majority opinion in *Leahy Appeal II* conflicts with this Court's decisions in *Barrentine* and *Skidmore*, bypasses the threshold factual issue of whether the officers' 30 minute meal period is compensable work time under the FLSA, and ignores the law of the case as established by an earlier panel of the same court.

B. The Court of Appeals' Decision Conflicts With The Tenth Circuit Court of Appeals.

The Tenth Circuit's ruling in *Lamon v. City of Shawnee*, 972 F.2d 1145 (10th Cir. 1992) is in direct conflict with the case at bar. *Lamon*, like this case, involved the meal period of police officers and its compensability under the FLSA. The *Lamon* court held that the controlling fact issue as to compensability is whether the meal period is spent "predominantly for the benefit of the

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[4] (...continued)

> actual effect of other departmental restrictions on meal periods, the pressures exerted by supervisors to discourage officers from making overtime claims and the practical ineffectiveness or inapplicability of the grievance process with respect to overtime claims for interrupted meal periods.

Prior to the filing of the motion for summary judgment the parties had filed a Joint Status Report advising the court that they had devised "a coordinated plan for completion of discovery". The court granted the parties joint motion to extend discovery, but did not pass on the parties coordinated plan for completion of discovery, did not set any discovery schedule and did not enter any order closing discovery. The discovery in the "coordinated plan" on the ultimate issue was not conducted because of the intercession of defendant's motion for summary judgment on narrow, affirmative defense issues.

employer,"—the threshold factual issue. Importantly, *Lamon* also involved a collective bargaining agreement which provided for overtime pay for hours worked in excess of 40 per week. Such provision had no applicability, however, because the threshold factual issue was not yet determined.

The *Leahy Appeal I* Court considered *Lamon* to be most instructive and quite comparable to the instant case, and adopted the "predominant benefit" rule as the rationale for its decision reversing the judgment on the pleadings.[5] The majority in *Leahy Appeal II* failed to follow the *Lamon* test and establishes the overtime provisions of a collective bargaining agreement as the litmus test for avoiding FLSA scrutiny, even though the collective bargaining agreement is silent on the FLSA issue! Judge Cudahy, in his dissent, characterizes the majority's holding as follows:

> Indeed, the assertion that merely by providing for overtime pay in its collective bargaining agreement an employer may insulate itself from FLSA scrutiny borders on the preposterous. Yet the majority's opinion essentially boils down to just such an assertion.

The *Leahy Appeal II* majority cites no case where it has ever been held that the mere existence of a general overtime provision in a collective bargaining agreement forecloses any claimed FLSA rights of workers.

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[5] The *Leahy Appeal I* Court also relied upon *Wahl v. City of Wichita*, 725 F.Supp. 1133 (D. Kan. 1989), complimenting the *Wahl* court on its "comprehensive analysis of the mealtime compensability issue." 994 F.2d 338; Appendix C-10.

C. The Question Presented Is Important.

The issue presented is purely a question of law. Are the compensation rights of employees under the FLSA satisfied, as a matter of law, by a standard overtime pay provision in a collective bargaining agreement? The decision below affects not only the plaintiff police officers, but is authority for substituting overtime pay provisions in labor agreements for FLSA scrutiny in all employment situations, municipal or otherwise, previously subject to the FLSA. In so ruling, the decision below conflicts with this Court's decision in the *Barrentine* case and may nullify *Barrentine* in the Seventh Circuit. The ripple effect of this clearly erroneous opinion is sure to be felt throughout the country.

Modern day labor agreements uniformly contain the kind of overtime pay provision which the *Leahy Appeal II* majority has concluded is controlling. Employers involved in FLSA controversies or litigation concerning the "compensability" issue throughout the country can be expected to rely upon the *Leahy Appeal II* decision as authority for eliminating consideration of the threshold factual determination of compensability. Employees, on the other hand, will look to *Lamon* and the concept that the threshold factual question determines "compensability" and not the overtime pay provisions of the labor agreement.

CONCLUSION

It may be expected that the decision below, if allowed to stand, will have a far-reaching, though erroneous effect on collective bargaining negotiations and on district courts and courts of appeal throughout the country. The law should be clarified before the *Leahy Appeal II* progeny develops. This unsupported challenge to *Barrentine* and disregard of the law of the case established in *Leahy Appeal I* should be reversed. Therefore, the Court should grant the petition.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 95-2015, 95-2016, 95-2017, 95-2018

DANIEL LEAHY, JAMES MARTINEZ, MICHAEL D. MOORE, *et al.*,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO, ILLINOIS,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 89 C 9354—**George M. Marovich**, *Judge*.

ARGUED APRIL 11, 1996—DECIDED SEPTEMBER 11, 1996

Before BAUER, CUDAHY, and EVANS, *Circuit Judges*.

BAUER, *Circuit Judge*. Chicago police officers sued the City of Chicago, alleging violations of the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 ("FLSA"). The officers claimed various restrictions on their meal periods rendered those periods compensable work time under the FLSA. The district court initially dismissed the case, and we reversed and remanded for further development of the facts regarding the frequency and duration of interruptions during the meal periods. On remand, the district court granted the City's motion for summary judgment, finding that the officers' meal periods were not compensable work time

under the FLSA. This time around we affirm, but on different grounds than the district court.[1]

Section 7(a) of the FLSA requires employers to pay overtime to employees who work more than 40 hours in a workweek. 29 U.S.C. § 207(a). However, the FLSA allows public agencies engaged in law enforcement activities to calculate overtime for law enforcement personnel based on a 28 day work period rather than the standard seven day period. 29 U.S.C. § 207(k). Under section 7(k), the departments must pay overtime only when employees have "tours of duty which in the aggregate exceed" 171 hours in a 28 day period. 29 U.S.C. § 207(k)(1); 29 C.F.R. §§ 553.201(a), 553.230. The Chicago Police Department operates under section 7(k)'s exemption. Its officers work shifts of eight-and-one-half hours, which include one unpaid half-hour meal period. The crux of this lawsuit is whether the officers' half-hour meal period is work time which should count towards the 171 hour limit beyond which they must receive overtime pay.[2] William Leahy

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[1] This case represents four consolidated appeals: *Leahy v. City of Chicago* (No. 95-2015), *Alexander v. City of Chicago* (No. 95-2016), *Accosta v. City of Chicago* (No. 95-2017), and *Arkana v. City of Chicago* (No. 95-2018).

[2] Although FLSA does not define "work," two regulations set out the circumstances in which meal periods may be excluded from the calculation of hours worked. First, 29 C.F.R. § 785.19(a) provides:

> (a) Bona fide meal periods. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. . . . The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating.

29 C.F.R. § 785.19(a). 29 C.F.R. § 553.223(b), which applies to agencies that elect to use the § 7(k) exception, permits the exclusion

(Footnote continued on following page)

and nineteen other current and former Chicago police officers initiated this action in state court in November 1989, claiming that the restrictions on their meal periods made those periods compensable work time under the FLSA. Those restrictions include: officers must receive permission from a dispatcher to take a meal period; officers must receive permission from a supervisor to leave their assigned districts during meal periods; officers must remain in uniform and comply with various rules governing conduct while in uniform; no more than two officers

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[2] *continued*

of meal periods from the calculation of hours worked on tours of duty of 24 hours or less

> provided that the employee is completely relieved from duty during the meal period, and all the other tests in § 785.19 of this title are met. On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., "stakeouts"), they are not considered to be completely relieved from duty, and any such meal periods would be compensable.

29 C.F.R. § 553.223(b).

With these regulations in mind, we and other circuit courts have adopted the "predominant benefit" test for determining whether meal periods constitute compensable work time under the FLSA. *See, e.g., Alexander*, 994 F.2d at 337; *Avery v. City of Talladega*, 24 F.3d 1337, 1345 (11th Cir. 1994); *Henson v. Pulaski County Sheriff Dept.*, 6 F.3d 531, 534 (8th Cir. 1993); *Lamon v. City of Shawnee*, 972 F.2d 1145, 1155-57 (10th Cir. 1992), *cert. denied*, 507 U.S. 972 (1993). An employee is considered to be completely relieved from duty during a meal period when the employee's time is not spent predominantly for the benefit of the employer. *Alexander*, 994 F.2d at 337. The FLSA requires compensation for meal periods during which a police officer cannot comfortably and adequately spend the mealtime because the officer's time or attention is devoted primarily to official responsibilities. *Lamon*, 972 F.2d at 1155-56. If during meal periods a police officer's time and attention are primarily occupied by a private pursuit, presumably the procurement and consumption of food, then the officer is completely relieved from duty and is not entitled to compensation under the FLSA. *Id.* at 1157.

may congregate during a meal period without prior permission; officers in two-person units must take their meals at the same time; officers must be available to end their meals upon request; officers must respond to emergencies and requests for assistance by the public; and officers must be available by radio to the dispatcher.

The City moved for summary judgment on two grounds. First, the City contended that the Portal-to-Portal Act, 29 U.S.C. § 259, barred the suit because the police department had based its practice of excluding the half-hour meal periods from compensable work time on a good faith reliance on a Department of Labor Letter Ruling. Second, the City asserted that the collective bargaining agreement between the City and the police officers declared that the officers' meal periods are not compensable work time, and therefore served as a complete defense to the lawsuit. The district court rejected both grounds upon which the City based its motion, and instead granted summary judgment on the merits, finding that the restrictions on the officers and the interruptions during their meal periods did not make the meal periods compensable time under the FLSA. We review the district court's summary judgment determination *de novo*.

The plaintiffs argue that the district court improperly granted summary judgment on the merits because discovery was not complete on the issue of the frequency and duration of interruptions during officers' meal periods. The City concedes this, and therefore does not defend the district court's reasoning. Instead, the City justifies the grant of summary judgment on a ground the district court rejected—that the collective bargaining agreement between the City and the police officers satisfies the FLSA by providing that officers will receive overtime pay if they work a full eight hours and also work during their meal period. Both parties acknowledge that discovery was complete as to this issue. We agree that the collective bargaining agreement protects the plaintiffs' rights to overtime compensation under the FLSA, and affirm the grant of summary judgment on that basis. *Flynn v. Sandahl*, 58 F.3d 283, 289 (7th Cir. 1995).

Collective Bargaining Agreement

The Fraternal Order of Police ("FOP") has acted as the collective bargaining representative of most Chicago police officers since 1979. During that time, the FOP and the City have entered into several collective bargaining agreements providing for fixed salaries for officers, as well as overtime pay at the rate of time-and-one-half for all hours worked in excess of eight hours in a day or 40 hours in a week. A memorandum of understanding attached to all of the collective bargaining agreements sets out certain benefits, including a half-hour meal period during each tour of duty. The collective bargaining agreements establish a grievance procedure for disputes about the interpretation or application of the agreement, and provide for arbitration before a neutral party for those disputes not resolved during the grievance procedures. It is undisputed that the FOP never has filed a grievance asserting that the uncompensated half-hour meal period constitutes a breach of the collective bargaining agreement.

Under the FLSA, employers and employees may make "reasonable provisions of contract [to guide] the computation of work hours where precisely accurate computation is difficult or impossible" *See Tennessee Coal, Iron & Railway Co. v. Muscoda Local No. 123*, 321 U.S. 590, 603 (1944). *See also Skidmore v. Swift & Co.*, 323 U.S. 134, 136-37 (1944); *Bowers v. Remington Rand, Inc.*, 159 F.2d 114, 116 (7th Cir. 1946), *cert. denied*, 330 U.S. 843 (1947). This means that employers and employees may resolve whether certain activity is "work" through a collective bargaining agreement, as long as the agreement comports with the FLSA. *See Beaston v. Scotland Sch. for Veterans' Children*, 693 F. Supp. 234, 239 (M.D. Pa. 1988), *aff'd*, 869 F.2d 587 (3d Cir. 1989). Here, if the collective bargaining agreement's guarantee of overtime compensation for time worked in excess of eight hours in an eight-and-one-half hour tour of duty protects Chicago police officers' FLSA rights to overtime compensation, then the agreement is a defense to liability under the FLSA and the plaintiffs' suit cannot succeed. This makes perfect sense

in situations where it is difficult to define precisely what constitutes working time.

Here, the collective bargaining agreement provides that "[a]ll time in excess of the hours worked in a normal workday (8 hours) and the normal workweek (40 hours) shall be compensated" at the rate of time-and-one-half. If an officer works more than eight hours, the officer is entitled to overtime pay. The parties' agreement therefore assumes that generally an officer is not working during a meal period, but provides for appropriate compensation when an officer actually does work during the meal. In fact, as the City argues, the collective bargaining agreement actually is *more* generous than the FLSA, which provides for overtime compensation only when an officer works more than 171 hours in a 28 day period.

The district court found that the collective bargaining agreement did not specifically address whether meal periods were compensable work time, and therefore the agreement by itself could not support summary judgment in favor of the City. In our previous opinion, which was based on a less developed record than we have here, we suggested in a footnote that the collective bargaining agreement was only one factor to consider in determining whether meal periods are compensable work time. *Alexander*, 994 F.2d at 339 n.11. However, upon further review, we conclude that the collective bargaining agreement can and does outright preclude the plaintiffs' claim. The agreement clearly states that an officer is entitled to overtime rates for hours worked in excess of eight hours per day. If an officer works more than eight hours in a day as a result of working during a meal period, the City will pay overtime rates for the excess work time. The FLSA requires no more. *Alexander*, 994 F.2d at 345 (Bauer, C.J., dissenting).

Indeed, the individual inquiry facilitated by the grievance process is the most efficient way to determine whether an officer's meal period should be compensable work time. The situation here—a police department of some 12,000

officers in different districts with different shift schedules and different exigencies arising each day that might affect officers' meal periods—is not conducive to a one-shot solution. The officers want just such a solution: because some officers on some days miss all or part of their meal periods, the plaintiffs want all meal periods to be compensable work time. That would brook a result we cannot sanction, where officers might be paid for doing nothing more than eating during their meal periods. Instead, we conclude that the collective bargaining provision guaranteeing overtime pay to officers who work more than eight hours in a day compensates officers if they work during their meal periods, and therefore fully protects the officers' FLSA rights.[3]

CONCLUSION

For the foregoing reasons, we affirm the district court's order granting the City's motion for summary judgment.

AFFIRMED.

CUDAHY, *Circuit Judge*, dissenting:

Judge Bauer, for the new majority, has done a skillful job of reviving and restating a substantial part of his dissent in the earlier appeal of this case, *Alexander v. City of Chicago*, 994 F.2d 333, 342 (7th Cir. 1993). In *Alexander*, we (or rather a fractionally different panel) refused to approve a judgment on the pleadings for the City on

[3] Some of the plaintiffs are sergeants, who are not covered by the collective bargaining agreement because of their rank. Sergeants receive one-half hour of overtime compensation in addition to eight hours of regular pay for each eight-and-one-half-hour tour of duty that they work. The tour of duty includes one half-hour meal period. Sergeants therefore work an eight-and-one-half hour tour of duty and get paid for eight-and-one-half hours. The FLSA requires no more than this.

an undeveloped record like the one that is now before us. In that phase of the case, I wrote for the old majority and Judge Bauer dissented. The case and the issue to be resolved have not changed in any respect, but the panel has changed. And this is decisive. As a result the law seems to have changed without so much as a nod of recognition by the new majority to the law of the case doctrine, which has been flagrantly violated here. This in itself is more than enough to compel rejection of the (new) majority opinion.

The majority says here that the collective bargaining agreement can be a complete defense to a Fair Labor Standards Act claim when the agreement supplies a dispositive definition of "work."[1] The majority opinion in *Alexander* specifically rejected this approach:

> Although a fact finder might consider [a collective bargaining agreement] as one among many factors in determining whether the officers were completely relieved of duty, it certainly does not outright preclude the officers' claim.

Id. at 339 n.11. The present opinion is thus in total contradiction of *Alexander*, but comports closely with the analysis of Judge Bauer's dissent in that earlier case. In his *Alexander* dissent, Judge Bauer asserted:

> Here, the City is bound by the collective bargaining agreement which requires that the Officers receive overtime rates when they work during their meal periods. The Officers do not allege that the City has breached the collective bargaining agreement and, absent such an allegation, I assume that the City fully complies with its terms. Consequently the City pays the Officers if they work during their meal periods and does not pay them if they do not work during their meal periods. FLSA requires no more.

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[1] Here, of course, the agreement supplies no definition of "work."

Id. at 345. The adoption of this analysis by the present majority obviously disregards the law of the case.

In order to deal at least cosmetically with this unseemly state of affairs, the majority opinion states that our previous opinion "was based on a less developed record than we have here" and concludes that "upon further review, we conclude that the collective bargaining agreement can and does outright preclude the plaintiffs' claim." Maj. Op. at 6. Assuming that the majority recognizes the "predominant benefit" test relied upon in *Alexander*, the conclusion that the collective bargaining agreement alone can outright preclude the plaintiffs' claim must imply that the required factual inquiry has been conducted and all of the facts other than the collective bargaining agreement have been shown to be inconsequential. This suggestion defies reality. The undeveloped—in fact, fragmentary—record now before us is in all relevant respects no different than the undeveloped record that confronted the *Alexander* panel. The record has not changed; only the composition of the panel has changed. All sides agree that discovery in this case is not complete. It is for this reason that the City concedes that Judge Marovich's summary judgment on the merits cannot be affirmed for the reasons on which he relied. If discovery is not over, this court can hardly conclude that the collective bargaining agreement provides dispositive facts. *Alexander* clearly held that the predominant benefit test could be applied only after the complete development of the relevant evidence.[2]

The majority's "further review" of the unchanged collective bargaining agreement leads it to suggest (contrary to *Alexander*) that the agreement is such an important factor that it makes all others pale into insignificance. The majority supports this suggestion by citing *Tennessee Coal, Iron & Railway Co. v. Muscoda Local No. 123*, 321 U.S. 590, 603 (1944), for the proposition that "employers

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[2] It is, of course, possible that summary judgment on the merits might be appropriate here after the completion of discovery.

and employees may make 'reasonable provisions of contract [to guide] the computation of work hours where precisely accurate computation is difficult or impossible.' " Maj. Op. at 5.

The majority neglects to point out, however, *Tennessee Coal*'s admonition that:

> The Fair Labor Standards Act was not designed to codify or perpetuate those customs and contracts which allow an employer to claim all of an employee's time while compensating him for only part of it. Congress intended, instead, to achieve a uniform national policy of guaranteeing compensation for all work or employment engaged in by employees covered by the Act. Any custom or contract falling short of that basic policy, like an agreement to pay less than the minimum wage requirements, cannot be utilized to deprive employees of their statutory rights.

Id. at 602-03. In short, the FLSA establishes statutory rights which may not be contracted away. As the Supreme Court has stated, ". . . congressionally granted FLSA rights take precedence over conflicting provisions in a collectively bargained compensation agreement." *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 740-41 (1981). Thus, even if the collective bargaining agreement had explicitly defined the officers' meal periods as non-compensable, an FLSA action could be sustained if the meal periods were actually for the predominant benefit of the employer.

Here, of course, the collective bargaining agreement contains no such definition. In the district court, the City moved for summary judgment on the grounds that the collective bargaining agreement declared that the officers' meal periods were not compensable work and therefore served as a complete defense to the lawsuit. Judge Marovich rejected this position, finding that the collective bargaining agreement "fails to include any agreement regarding the meal periods." Dist. Ct. Op. at 11. This finding is obviously correct, and the majority has not sug-

gested anything in the agreement that would put it in doubt. Rather, the majority rests its case on the fact that, "The agreement clearly states that an officer is entitled to overtime rates for hours worked in excess of eight hours per day." Maj. Op. at 6. This virtual truism hardly addresses the question now before us—whether officers' meals involve "work." In fact, the collective bargaining agreement has nothing to say on the issue before us, as the *Alexander* panel held and as Judge Marovich has subsequently found.

The majority opinion would leave the determination of whether the officers' meal periods constitute "work" to case-by-case grievance arbitration. In fact, the majority opinion seems to rest on nothing more substantial than the belief that such arbitration may be a better way to resolve the question than would litigation in federal court. However, there is no abstention doctrine that tells us to abstain in favor of an arbitrator. Nor is there any like doctrine of primary jurisdiction. In fact, the Supreme Court has held that a worker may pursue a remedy under the FLSA even after *losing* a grievance arbitration. *Barrentine*, 450 U.S. at 740 ("No exhaustion requirement or other procedural barriers are set up, and no other forum for enforcement of statutory rights is referred to or created by the statute.").

The issues that are before us have been successfully litigated by courts in a number of jurisdictions where grievance arbitration might have been an alternative means of resolving the issues. *See, e.g., Lamon v. City of Shawnee*, 972 F.2d 1145 (10th Cir. 1992), cert. denied 507 U.S. 972 (1993); *Berry v. County of Sonoma*, 30 F.3d 1174 (9th Cir. 1994), cert. denied 115 S. Ct. 1100 (1995); *Henson v. Pulaski County Sheriff Dept.*, 6 F.3d 531 (8th Cir. 1993); *Reich v. New York City Transit Authority*, 45 F.3d 646 (2d Cir. 1995); *Renfro v. City of Emporia*, 948 F.2d 1529 (10th Cir. 1991), cert. denied 503 U.S. 915 (1992); *Wahl v. City of Wichita*, 725 F. Supp. 1133 (D. Kan. 1989). *Wahl* involved an agreement requiring that officers who worked in excess of 40 hours per week should receive

overtime pay at the rate of one-and-one-half times their regular rate of pay. *Wahl*, 725 F. Supp. at 1136. Such provisions are presumably common in labor agreements throughout the country but do not resolve the compensability issue for FLSA purposes. The agreement did not resolve the issue in *Wahl*, and the City has cited no case where such a provision was conclusive on the question of compensability under the FLSA. *See also*, *Berry*, 30 F.3d at 1182 (collective bargaining agreement not dispositive); *Reich*, 45 F.3d at 647.

In analyzing a question similar to that presented in the case before us (whether firefighters must be compensated for time spent on call), the Supreme Court noted the fact-specific nature of such determinations and the role which the employment agreement should play in the analysis. The Court stated:

> We have not attempted to, and we cannot, lay down a legal formula to resolve cases so varied in their facts as are the many situations in which employment involves waiting time. Whether in a concrete case such time falls within or without the Act is a question of fact to be resolved by appropriate findings of the trial court. This involves scrutiny and construction of the agreements between the particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the surrounding circumstances.

Skidmore v. Swift & Co., 323 U.S. 134, 136-37 (1944) (citations omitted). The fact that a collective bargaining agreement, rather than a simple employment contract, is involved here does not change this basic analysis. As the Court pointed out in *Barrentine*:

> In contrast to the Labor Management Relations Act, which was designed to minimize industrial strife and to improve working conditions by encouraging employees to promote their interests *collectively*, the

> FLSA was designed to give specific minimum protections to *individual* workers . . . .

Barrentine, 450 U.S. at 739 (emphasis in original).

Indeed, the assertion that merely by providing for overtime pay in its collective bargaining agreement an employer may insulate itself from FLSA scrutiny borders on the preposterous. Yet the majority's opinion essentially boils down to just such an assertion.

The majority also suggests that grievance arbitration would be more efficient than litigation under the FLSA in this case. The suggestion is apparently that allowing 12,000 officers to bring individual grievances about meal periods would be more efficient than would a decision about those periods under the FLSA. There might be reasons to prefer tens of thousands of individual grievance procedures over one lawsuit; but "efficiency" is not one of those reasons.

Therefore, I respectfully dissent.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

November 7, 1996.

Before

Hon. WILLIAM J. BAUER, Circuit Judge
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. TERENCE T. EVANS, Circuit Judge

DANIEL LEAHY, et al.,

Plaintiffs-Appellants,

Nos. 95-2015, 95-2016,
95-2017, 95-2018

v.

CITY OF CHICAGO,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
Nos. 89 C 9354, 90 C 7284, 92 C 667, 94 C 2237—**George M. Marovich**, *Judge*.

ORDER

On consideration of the petition for rehearing with suggestion for rehearing en banc filed in the above-captioned case by plaintiffs-appellants and the answer filed by the defendant-appellee, no judge in active service has re-

quested a vote thereon, and a majority of the judges on the original panel have voted to deny.*

Therefore, the petition for rehearing with suggestion for rehearing en banc is hereby denied.

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* The Honorable Joel M. Flaum did not participate in the consideration of the petition for rehearing en banc.

APPENDIX B

[Dated March 28, 1995]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	
	)	Hon. George Marovich
CHICAGO POLICE DEPARTMENT	)	89 C 9354
F.L.S.A. MEAL PERIOD	)	90 C 7294
LITIGATION	)	92 C 667
	)	94 C 2237

MEMORANDUM OPINION AND ORDER

Chicago police officers ("Officers") have filed suits against the City of Chicago ("City") alleging violations of the overtime provision of the Fair Labor Standards Act of 1938 ("FLSA") because of various restrictions placed upon their meal period. The Officers claim that these restrictions render their meal period compensable under the FLSA. The Officers filed four cases against the City. *Leahy v. City of Chicago,* 89 C 9354 was brought as a representative action, with over 5,500 police officers opting into it. *Alexander v. City of Chicago,* 90 C 7294, *Accosta v. City of Chicago,* 92 C 667, and *Arkana v. City of Chicago,* 94 C 2237, were filed as individual actions. Approximately 173 additional plaintiffs were named in *Alexander,* 1621 in *Accosta,* and 309 in *Arkana.* All four cases were consolidated for purposes of discovery and dispositive motions and are referred to as captioned above.

This Court granted judgment on the pleadings for the City in holding that the Officers' meal period was not compensable work time under the FLSA, and the plain-

tiffs appealed. The Seventh Circuit reversed and remanded holding that the allegations in the Officers' complaints were sufficient to raise a viable claim, the merits of which could not be resolved as a matter of law on the limited facts available. This action is before this District Court. Discovery is complete and the City moved for summary judgment. The City alleges that the Portal-to-Portal Act, 29 U.S.C. § 259 ("Portal Act") is a bar to the Officers' action, and that a collective bargaining agreement between the City and the Officers declares that the Officers' meal period is not compensable work time. For the reasons set forth below, we grant the City's motion for summary judgment.

LOCAL RULE 12

In this district, Local Rules 12(m) and 12(n) require the parties moving for and opposing summary judgment under Rule 56 of the Federal Rules of Civil Procedure to state the material facts of the case. Local Rule 12(m) requires the moving party to provide a supporting memorandum of law, including a statement of material facts as to which that party contends there is no genuine issue and which entitles that party to summary judgment as a matter of law. The movant is required to set each fact in a short numbered paragraph and include a specific reference to the record to support that fact.

Local Rule 12(n) requires the party opposing summary judgment to submit a supporting memorandum of law, including a supporting statement responding to each numbered paragraph in the movant's statement of material facts. The party opposing summary judgment must state any disagreement to the material facts set forth by

the moving party. If the party opposing summary judgment fails to state any disagreement with the facts set forth in the movant's statement, these facts are deemed admitted. These requirements have been strictly enforced in this district. *See Pasant v. Jackson Nat'l Life Ins. Co.*, 768 F. Supp. 661, 663 (N.D. Ill. 1991); *Davis v. Frapolly*, 756 F. Supp. 1065, 1069-70 (N.D. Ill. 1991), and in the Court of Appeals. *See Brown v. United States*, 976 F.2d 1104, 1108 (7th Cir. 1992); *Capitol Converting Equip., Inc. v. LEP Transp., Inc.*, 965 F.2d 391, 294-95 (7th Cir. 1992); *Bell, Boyd and Lloyd v. Tapy*, 896 F.2d 1101, 1103 (7th Cir. 1990).

The following statement of facts is drawn from a careful consideration of the City's Motion for Summary Judgment, its 12(m) statement and the Officers' 12(n) statement, and the record of this case.

BACKGROUND

The Officers are past and present members of the Chicago Police Department ("CPD") assigned to the patrol and traffic divisions. All sworn CPD members may be divided into three broad categories: 1) those who are not assigned to field duties and who generally are assigned to an eight hour tour of duty; 2) those who are assigned to field duties and primarily receive their assignments from the CPD's communications system via radio; and 3) those who are assigned to field duties but generally do not receive assignments via the CPD's communications system.[1]

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[1] We will address those sworn members of the CPD who are assigned to field duties and receive their assignments via

(continued...)

All personnel who are assigned to field duties are scheduled for eight and one half hour tours of duty, including a one half hour uncompensated meal period. The Officers filed suit charging that the City's failure to compensate them for their meal period violates the FLSA. The Officers claim that the restrictions that the City places upon their meal period render the meal period compensable under the FLSA. Specifically, the Officers claim that they are restricted during their meal breaks in the following ways:

1. Officers must respond to requests for assistance or information from members of the public. Officers are recognizable to the public because the officers are required to carry their service weapons and remain in full uniform, if on uniform duty.

2. Officers (patrol officers) are required to remain within the district and/or sector of assignment unless prior permission to leave such area is granted by a supervisor.

3. Officers are required to adhere to all regulations concerning conduct while in uniform, i.e., officers must refrain from congregating (no more than two officers may be present in the same establishment without prior permission); officers must refrain from the consumption of alcoholic beverages; officers must

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[1] (...continued)
radio. We will not address those sworn members of the CPD who are assigned to field duties but do not receive their assignments via CPD's communications system because it is undisputed that this group has fewer restrictions placed upon their meal period than those receiving assignments via radio. We will not address those sworn members of the CPD who are not assigned to field duties because they are supervisory personnel who automatically receive one half hour of automatic overtime pay for each tour of duty.

refrain from conduct deemed by the CPD to be inappropriate or tending to reflect poorly upon the uniform.

4. a) Officers who have assigned portable radio units must maintain the radio units with them and remain in radio contact and respond to both calls for information and calls regarding police emergencies on such radios.

b) Officers not assigned to portable radio units must spend their meal period at a location where they can be reached by telephone, must provide the dispatcher with the telephone number and must respond to calls or requests for information on such telephones.

5. Officers must receive permission from the dispatcher to take a meal period, and such permission may be and frequently is denied depending upon the workload of the district and the availability of other police officers to respond to calls.

We will first address the City's Portal Act defense. Next, we will address the City's collective bargaining agreement defense. Finally, we will address whether the restrictions placed upon the Officers' meal period render the meal period compensable overtime under the FLSA.

DISCUSSION

Summary judgment is appropriate only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, present no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). On issues where the nonmovant bears the

ultimate burden of proof, he must present definite, competent evidence to rebut the motion. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-257 (1986). Summary judgment is granted only when the record reveals that no reasonable jury could find for the non-moving party. *Karazanos v. Navistar Int'l Transp. Corp.*, 948 F.2d 332, 335 (7th Cir. 1991). In ruling on a summary judgment motion, the court "must construe the facts alleged in the light most favorable to the party opposing the motion for summary judgment." *Stumph v. Thomas & Skinner, Inc.*, 770 F.2d 93, 97 (7th Cir. 1985) (quoting *Janowiak v. City of South Bend*, 750 F.2d 557, 559 (7th Cir. 1984).

A. Portal Act Defense

The City contends that it is entitled to summary judgment because the Portal Act is a per se bar to the Officers' action. The Portal Act provides in relevant part:

> . . . no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, . . . if he pleads and proves that the act or omission complained of was in good faith[,] in conformity with[,] and in reliance on any written administration regulation, order, ruling, approval, or interpretation of [the Administrator of the Wage and Hour Division of the Department of Labor] . . . Such a defense, if established, shall be a bar to the act or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

Thus, the Portal Act insulates an employer from liability under the FLSA if the employer acted on the basis of a government agency's interpretation of law, even if the agency's interpretation later turns out to be wrong. *Equal Employment Opportunity Comm'n v. Home Ins. Co.*, 672 F.2d 252, 263 (2d Cir. 1982). To establish the Portal Act defense, employers must prove three interrelated elements: (1) that their action was taken in reliance on a ruling of the Administrator of the Wage and Hour Division of the Department of Labor; (2) that their action was in conformity with that ruling; and (3) that their action was in good faith. *Cole v. Farm Fresh Poultry, Inc.*, 824 F.2d 923, 926 (11th Cir. 1987); *Equal Employment Opportunity Comm'n*, 672 F.2d at 263.

The City asserts that the Portal Act is a per se bar to the Officers' action because the CPD's long-standing practice of excluding one-half hour meal periods from compensable work time is based upon a good faith reliance on a Department of Labor Letter Ruling. We begin our analysis of the City's Portal Act defense with an inquiry into a series of alleged CPD daily meetings which occurred throughout the summer and fall of 1985. The regular participants of these meetings were James Sazama, a CPD lieutenant presently assigned as an Inspector in the Auditing and Internal Control Division ("Sazama"); William Alexander, a CPD lieutenant presently assigned as an Inspector in the Auditing and Internal Control Division ("Alexander"); and Gary Clark, a CPD patrol officer presently assigned as Manager of Police Payroll in the Finance Division ("Clark"). Sazama, Alexander, and Clark ("the small group") met to review the CPD policies, practices, and procedures in light of *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S.

528, 533 (1985), which made the FLSA applicable to state and local government. Periodically, the small group met with a larger committee headed by Dennis Nowicki, then-Deputy Superintendent of the CPD, to analyze the CPD policies, practices, and procedures.

In addressing the impact of *Garcia* on the CPD, the small group claims to have analyzed the CPD's meal policy according to a Los Angeles Department of Labor Letter Rule ("Letter Ruling"). This Letter Ruling addressed the question of whether the meal period of uniformed officers in Los Angeles could be treated as non-compensable time under FLSA. The small group allegedly determined that based on the three-part test of the Letter Ruling, the CPD need not compensate the Officers' meal periods for the following reasons: (1) one-half hour is a sufficiently long meal period; (2) the meal periods are taken at suitable times during the tour of duty; and (3) the Officers have no duties to perform during times they are not being compensated because, in the event that an officer is called upon to perform police work during a meal period, that officer is entitled to an extended meal period, another meal period, or overtime compensation if the interrupted meal cannot be made up. Those in the small group also determined that based on their personal experiences, citizen interruptions as referenced in the Letter Ruling are infrequent and brief. Further, the small group allegedly met with the larger committee which concurred with every aspect of the small group's comparison of the Letter Ruling to the CPD meal period policy.

Unfortunately, the CPD's file regarding the effect of the FLSA on CPD policies and procedures has been destroyed in accordance with the CPD record retention

schedule. Oddly enough, not one member of the small group has any recollection of exactly what was covered at any particular meeting; whether any written documents were generated at these meetings; what anyone said; or who was at the "larger committee meetings." The Officers argue that the small group failed to fully analyze the CPD's meal period policy under the three-part test of the Letter Ruling. Specifically, the Officers assert that the Letter Ruling did not provide a clear answer to the particular situation of the CPD Officers' meal period and that "good faith reliance" is a material fact question. The Officers also maintain that the conclusions of Alexander, Sazama, and Clark and the concurrence of the larger committee are insufficient to establish that the CPD meal period policy is in conformity with the Letter Ruling.

To be successful under the Portal Act defense, the City must prove that it relied on the Letter Ruling; that its action was in conformity with that ruling; and that its action was in good faith. Because the small group is unable to recall any details of the alleged numerous meetings, we are unable to assess whether the City even relied on the Letter Ruling in analyzing its meal period policy, much less whether the City's action was in good faith. We have no set of facts on which to conclude that the small group adequately evaluated the Letter Ruling. Because we cannot say, as a matter of law, that the City relied in good faith on the Letter Ruling, we cannot find that the Portal Act defense applies here. We turn to the next defense, which is the collective bargaining issue, to determine if this dispute has already been resolved between the parties and is incorporated in the collective bargaining agreement.

B. Collective Bargaining Agreement

The City argues that it is entitled to summary judgment because the City and the Officers, through arms' length negotiations, have agreed that the Officers' meal period is not compensable work time. Under the FLSA, employers and employees may make "reasonable provisions of contract or custom" that govern the computation of work hours where precisely accurate computation is difficult, or where there is substantial question as to whether certain activity or non-activity is "work." *Tennessee Coal, Iron & Railway Co. v. Muscoda Local No. 123,* 321 U.S. 590, 602 (1944). Thus, employers and employees may resolve the question of whether certain activity or non-activity is "work" under the FLSA through a written collective bargaining agreement. *Beaston v. Scotland Sch. for Veterans' Children,* 693 F. Supp. 234, 239 (M.D. Pa. 1988), *aff'd,* 869 F.2d 587 (3d Cir. 1989); *General Elec. Co. v. Porter,* 208 F.2d 805, 814 (9th Cir. 1953), *cert. denied,* 347 U.S. 951 (1954); *Bowers v. Remington Rand, Inc.,* 159 F.2d 114, 116 (7th Cir. 1946), *cert. denied,* 330 U.S. 843 (1947); *Tennessee Coal, Iron & Railway Co.,* 321 U.S. at 602. Furthermore, in determining what constitutes "work" under the FLSA, courts are obligated to ascertain whether the parties have reached an express or implied agreement on the matter. *Skidmore v. Swift & Co.,* 323 U.S. 134, 137 (1944).

The City argues that beginning with the parties' first contract negotiations in 1981 and continuing through the parties' fifth and final contract negotiations in 1991, the City and the Fraternal Order of Police ("FOP") agreed to an uncompensated meal period. The City supports this contention by pointing to the fact that the FOP repeated-

ly dropped its proposals for paid meal periods; therefore, the FOP agreed that the meal period was not compensable. The City also points to numerous benefits that the FOP successfully bargained for during the contract negotiations.

The Officers maintain that the FOP never explicitly agreed to the uncompensated meal period during any one of these five contract negotiations. In fact, the Officers assert that although the FOP repeatedly proposed that the Officers' meal period be compensable, the parties never even discussed the restrictions on the officers' meal period. The Officers argue that the FOP "did not want to take a hard position that might result in the entire elimination of the meal period."

Of course, our starting point must be the collective bargaining agreement itself; and that document fails to include any agreement regarding the meal periods. In order to determine whether an implied agreement exists between the parties in the absence of this express agreement, we must look to the intent of the parties and the circumstances surrounding the agreement. Upon examination of the competing and divergent views of the FOP's abandonment of the meal period issue, it becomes evident that a disputed issue of fact exists as to whether this issue was encompassed in the collective bargaining agreement. However, even in light of this disputed factual issue, the court must still examine the FLSA and determine whether relief can be granted under the circumstances.

C. Compensability of Meal Period

The FLSA requires employers to pay overtime to employees who work more than forty hours per week.

§ 207(a). However, § 207(k) creates an exception to the standard wage and hour provisions of the FLSA ("§ 7(k)" exception). Under § 7(k) public law enforcement and fire departments may declare work periods from seven to twenty-eight consecutive days. Employees working within a twenty-eight day work period are entitled to overtime if they work in excess of 171 hours within that period. The City has elected to pay the Officers on the basis of a twenty-eight day work period, and the parties agree that if the Officers work more than 171 hours within that period, they are entitled to overtime pay. The sole issue remaining before us is whether the Officers' meal period is work time which should be included within the 171 hour calculation.

Although the FLSA does not define "work," two FLSA regulations set out the circumstances in which meal periods may be excluded from hours worked. First, 19 C.F.R. § 785.19(a) provides:

> (a) Bona fide meal periods. Bona fide meal periods are not work time. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. 19 C.F.R. § 785.19(a).

Second, for those agencies using the § 7(k) exception, 29 C.F.R. § 553.223(b) provides that mealtime may be ex-

cluded from hours worked on tours of duty of less than 24 hours

> provided that the employee is completely relieved from duty during the meal period, and all the other tests in § 785.19 of this title are met. On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., "stakeouts"), they are not considered to be completely relieved from duty, and any such meal periods would be compensable. 29 C.F.R. § 553.223(b).

Both of these regulations contain the same "completely relieved of duty standard" yet use extremely different examples to describe when an employee is not completely relieved of duty. However, the "completely relieved of duty standard" is not necessarily different for each section. Rather, a law enforcement employee is "completely relieved of duty" during a meal period when the employee's time is not spent predominantly for the benefit of the employer. In other words, "FLSA requires remuneration for meal periods during which a police officer is unable comfortably and adequately to pass the mealtime because the officer's time or attention is devoted primarily to official responsibilities." *Alexander v. City of Chicago,* 994 F.2d 333, 337 (7th Cir. 1993) (citing *Lamon v. City of Shawnee,* 972 F.2d 1145, 1157 (10th Cir. 1992), *cert. denied,* 113 S. Ct. 1414 (1993)). *See also Avery v. City of Talladega,* 24 F.3d 1337, 1345 (11th Cir. 1994) (adopting *Lamon* standard); *Henson v. Pulaski County Sheriff Dept.,* 6 F.3d 531, 534 (8th Cir. 1993) (adopting *Lamon* standard). Therefore, the *Lamon* standard will govern our assessment of whether the Officers' meal period is work time which should be included within the 171 hour calculation.

For purposes of our analysis, we will assume that all of the restrictions that the Officers claim are placed upon their meal period are true, and we will address each restriction in turn. First, the Officers claim that their meal period is restricted because they must respond to requests for assistance or information from members of the public. The Officers assert that they are easily recognizable to the public because the officers are required to carry their service weapons and remain in full uniform, if on uniform duty. The Officers maintain that the interruptions from citizens last anywhere from a few minutes to a total disruption of the meal period and occur on the average between 30-40% of the time.[2] The Officers generally cite the following as examples of citizen interruptions: requests for directions, requests for traffic ticket information, requests for general information, reports of disturbances or fights, and comments on community problems.

This situation is analogous to the situation in *Albee v. Village of Bartlett,* 861 F. Supp. 680, 685 (N.D. Ill. 1994). The officers in *Albee* claimed that their meal period should be compensable under the FLSA because the meal period was only occasionally interrupted by questions from civilians. The court focused on the short duration of the citizen interruptions in determining that the officers had not been "badgered by civilians to the extent that

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[2] The Officers' Affidavits, Group Ex. 1, 2, and 3 assert that citizen interruptions last anywhere from a few minutes to a total disruption of the meal period and occur between 10-80% of the time. Based on these 240 affidavits, we have calculated that the citizen interruptions occur on the average between 30-40% of the time. Accordingly, we will refer to the frequency of citizen interruptions as occurring between 30-40% of the time.

their meal period was not their own." *Id.* at 685-86. *See Alexander,* 994 F.2d at 341 (Crabb, J., concurring) (the frequency of interruptions rather than the possibility of interruptions determines whether officers' attention is devoted primarily to official responsibilities during meal periods). Further, the court held that the officers' meals are not compensable because civilian interruptions are largely a function of where law enforcement employees choose to take their meals. *Id.* at 685. For example, employees who pick locations at the center of town are more likely to be approached by civilians. *Id.* at 686.

Other circuits have also resolved this issue against the officers. The Tenth Circuit found that officers' responsibility to respond to citizen inquiries does not render a meal period compensable because "[t]hat a police officer is on-call and has some limited responsibilities during meal periods does not perforce mean the officer is working." *Armitage v. City of Emporia,* 982 F.2d 430, 432 (10th Cir. 1992) (citing *Lamon,* 972 F.2d at 1157). The Eighth Circuit concluded that the possibility that citizens may ask officers questions during meal periods does not render the meal periods predominantly for the benefit of the employer. *Henson,* 6 F.3d at 536. *See also Bagrowski v. Maryland Port Auth.,* 845 F. Supp. 1116, 1120 (D. Md. 1994) (occasional citizen inquiries during meal period does not mean that officers were primarily engaged in work-related activities). Moreover, the fact that officers must remain in uniform during their meal period makes no difference. By the nature of their job, officers must be able to respond to emergencies without the delay of changing back into the required uniform. *Albee,* 861 F. Supp. at 688. *Accord Avery,* 24 F.3d at 1347; *City of Univ. Park v. University Park Police Ass'n,* 766 S.W.2d 531, 532 (Tex. Ct. App. 1989).

We conclude that the requirement that Officers respond to citizen inquiries during a meal period does not render their meal period compensable under the FLSA. The interruptions from citizens could last only a few minutes, and the interruptions allegedly occur on the average only between 30-40% of the time. The frequency and extent of these alleged interruptions does not lead us to the conclusion that the Officers are badgered by civilians to the extent that their meal period is not their own. Thus, the Officers are not engaged in work-related duties during their meal period simply because they must respond to citizen inquiries. Such a conclusion could lead to the following absurd result: an officer enters a restaurant and spends thirty seconds pointing a civilian in the right direction; the officer is then compensated for the entire thirty minutes of the meal period. We decline to accept this logic and find that citizen interruptions do not transform the Officers' meal period into time spent for the predominant benefit of the City. Moreover, we find that the Officers' requirement to remain in uniform makes no difference. Critical to police work is the ability to respond to emergency situations. The time-consuming task of changing back into the required uniform after a meal period would thwart this ability. Therefore, these restrictions do not render the Officers' meal period compensable under the FLSA.

Second, Officers are required to remain within their district and/or sector of assignment unless prior permission to leave the area is granted by a supervisor. Addressing this very issue, the Eleventh Circuit concluded that no reasonable jury could find that officers' meal periods are spent predominantly for the benefit of the City notwithstanding the restriction on officers to remain within their jurisdiction during their meal periods. *Avery*,

24 F. 3d at 1347. *Accord Bagrowski,* 845 F. Supp. at 1120 n.4. Similarly, in *Albee,* the court concluded that "there is no substance to the objection that officers are not permitted to leave town during their half-hour breaks." 861 F. Supp. at 688. *Accord City of Univ. Park,* 766 S.W.2d at 532.

We are unable to imagine why the Officers would be unable comfortably and, adequately to pass their meal-time at a restaurant within their own jurisdiction. Furthermore, this restriction does not require the Officers to devote either their time or their attention to official responsibilities. We conclude that even Officers who must eat at restaurants within their own jurisdiction are fully able to devote their time and attention to satisfying their appetite. Therefore, the Officers' obligation to remain within their district and/or sector does not render their meal period compensable under the FLSA.

Third, Officers are required to adhere to all regulations concerning conduct while in uniform, i.e., officers must refrain from congregating, which is defined that no more than two officers may be present in the same establishment without prior permission; officers must refrain from the consumption of alcoholic beverages; officers must refrain from conduct deemed by the CPD to be inappropriate or tending to reflect poorly upon the uniform. These restrictions are comparable to the restrictions in *Armitage,* 982 F.2d at 431.

The detectives in *Armitage* were not allowed to consume alcohol during lunch and were required to act in a professional manner toward the public. *Id.* Nevertheless, relying on the *Lamon* standard, the Tenth Circuit concluded that the detectives were not primarily engaged in work-related duties during their meal period. *Id.* Similar-

ly, in *Albee,* the officers complained that they usually could not take lunch with another officer. 861 F. Supp. at 688. However, the court concluded that this limitation is inherently compelled by the limited numbers of police department personnel and by the need to have some personnel on active duty at all times. *Id.*

Remaining sober and professional during lunch does not merit compensation under the FLSA. We find that these requirements in no way force the Officers to devote their time and attention to official responsibilities. The City inevitably benefits from employing sober and professional officers, yet it does not follow that the Officers' meal period is predominantly for the City's benefit. We find that such restrictions do not convert the Officers' meal time into work time under the FLSA.

Fourth, Officers who have assigned portable radio units must maintain the radio units with them, remain in radio contact, and respond to both calls for information and calls regarding police emergencies. Officers not assigned to portable radio units must spend their meal period at a location where they can be reached by telephone, must provide the dispatcher the telephone number, and must respond to calls or requests for information. The Eleventh Circuit addressed identical restrictions in *Avery*, 24 F.3d at 1347. The court found that neither the officers' responsibility to leave their radios on during lunch nor the detectives' responsibility to leave a telephone number where they may be reached during lunch inhibits these employees' ability to "comfortably and adequately pass the mealtime." *Id.* at 1347 (citing *Lamon,* 972 F.2d at 1158). The Eight Circuit also addressed this restriction in *Henson,* 6 F.3d at 536. The court determined that the officers' responsibility to monitor their radios during lunch did not mean that the

officers spent their meal breaks predominantly for the benefit of their employer. *Accord Lamon*, 972 F.2d at 1157; *Albee*, 861 F. Supp. at 686; *Bagrowski*, 845 F. Supp. at 1120.

Being on-call does not make meal time work time. The Officers are fully able to "comfortably and adequately pass the mealtime" even with their radios on. While the City may benefit from having the Officers available to respond to potential police emergencies, this restriction is not for the predominant benefit of the City. In fact, the City alleges that this restriction is for the benefit of the Officers. For exampLe, the dispatcher may need to contact an officer regarding a family or personal emergency. Regardless, it is undisputed that if an officer is called to duty via radio or phone during meal period and misses the entire meal period, then the City must compensate the officer.[3] If the Officers do not work, they do not get paid. If the Officers work, they get paid. We find this policy to be logical. Thus, we conclude that the Officers' alleged requirement to remain in either radio or telephone contact does not render the Officers' meal periods compensable under the FLSA.[4]

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[3] The Officers allege that they are discouraged from reporting a missed or interrupted meal period. However, the City has referenced a number of grievances that the Officers have filed regarding missed meal periods. Moreover, we will not fault the City for an officer's individual decision not to file a grievance for a missed meal period. *See Albee*, 861 F. Supp. at 686 (City not responsible for ensuring that officers submit overtime cards for a missed meal period).

[4] Fifth, the Officers must receive permission from the dispatcher to take a meal period, and allegedly such permission may be and frequently is denied depending upon the workload of the district. We need not address this issue because it is

(continued...)

The trend is clear. Notwithstanding restrictions on meal periods, meal time is not work time under the FLSA unless the employees' time is spent predominantly for the benefit of the employer. As referenced by the preceding case law, even looking at the totality of the restrictions placed upon the Officers' meal period, we do not find that the Officers' meal period is predominantly for the benefit of the City. In sum, no reasonable fact-finder could find from the evidence presented that the Officers are primarily engaged in work-related activities during their meal period. Accordingly, the Officers' meal period is not compensable under the FLSA. Therefore, summary judgment for the City is appropriate.

CONCLUSION

Defendant's motion for summary judgment is granted.

ENTER:

/s/ George M. Marovich
GEORGE M. MAROVICH
UNITED STATES DISTRICT JUDGE

DATED: March 28, 1995

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[4] (...continued)
undisputed that if an officer misses an entire meal period, then the City must compensate the Officer. Moreover, the requirement to receive permission from a dispatcher precedes the Officers' meal period; it is not a restriction during the meal period. Because dispatchers monitor police officers' assignments, this requirement is compelled by the very nature of the police work.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 92-1441, 92-1442 & 92-1448

JULIE ALEXANDER, CARMEL G. ABBATE, BOZEMAN ANDERSON, et al.,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO, a municipal corporation,

Defendant-Appellee.

Appeals from the United States District Court
for the Northern District of Illinois, Eastern Division.
Nos. 90 C 7294, 89 C 9354 & 92 C 667—**George M. Marovich**, *Judge.*

ARGUED NOVEMBER 9, 1992—DECIDED MAY 12, 1993

Before BAUER, *Chief Judge*, CUDAHY, *Circuit Judge*, and CRABB, *District Judge.**

CUDAHY, *Circuit Judge.* A group of Chicago police officers alleged that the extent of the restrictions applied to their half-hour meal breaks required that they be compensated for such breaks under the Fair Labor Standards Act, 29 U.S.C. §§ 200-219. The district court granted the City's motion for judgment on the pleadings in the first of three related cases and subsequently dismissed the companion cases. The officers appeal. We reverse.

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* The Honorable Barbara B. Crabb, Chief Judge of the United States District Court for the Western District of Wisconsin, is sitting by designation.

I.

Under section 7(a) of the Fair Labor Standards Act (FLSA), employers must pay overtime to employees who work more than forty hours weekly. 29 U.S.C. § 207(a). An exception to that provision, embodied in section 7(k) of the FLSA, 29 U.S.C. § 207(k), allows public law enforcement and fire departments to declare work periods from seven to 28 consecutive days; under that scheme, employees working within a 28-day work period are entitled to overtime if they work more than 171 hours. The City of Chicago, which has elected to use the permitted exemption, allows its police officers overtime at time and a half of their pay for any hours over 171 in a 28-day period. The officers work shifts of 8.5 hours, which includes one uncompensated half-hour meal period.

Twenty current and former Chicago police officers initiated this action in state court in November 1989 alleging that the rules and restrictions applied to their half-hour meal periods necessitated that those periods be counted as compensable hours within the tour of duty pursuant to the FLSA. *Leahy v. City of Chicago*, 785 F. Supp. 724 (N.D. Ill. 1992).

Specifically, the plaintiffs' complaint puts forth an extensive list of requirements to which the officers must adhere during their meal breaks: officers must receive permission—frequently denied—to take a meal period, and cannot take that period during the last hour of a shift assignment; they must remain within their district; they must remain in full uniform while adhering to myriad regulations regarding conduct while in uniform; officers are not permitted to take meals at locations other than establishments serving food and those in two-person units must take meals together; officers must be available to terminate their meals upon request; no more than two officers may be present in the same establishment; officers must refrain from conduct that the department deems inappropriate for an officer, apparently including playing golf,

reading nondepartmental publications, resting and napping; officers must refrain from drinking alcohol; they must respond to emergencies and requests for assistance by the public; and they must either spend the period where they can be reached by phone, or, if assigned to portable units, keep the units with them. Officers also are subject to report and review by inspectors during meal periods. In limited circumstances, officers can request prior permission to disregard some of the above-noted restrictions, such as that prohibiting more than two officers from eating at the same place.

The action was removed to federal court and about 5,600 other police officers joined the original plaintiffs in the first case, *Leahy v. City of Chicago*, 785 F. Supp. 724 (N.D. Ill. 1992). Others who missed the cutoff date for joining the action filed separate complaints in *Alexander v. City of Chicago* and *Accosta v. City of Chicago*. The complaints allege the same restrictions; amended complaints in the *Alexander* and *Accosta* actions also allege that requests by the public for assistance and information and interruptions by supervisors and inspectors occur regularly and frequently.

The City moved in the *Leahy* case for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). The district court granted the City's motion for judgment on the pleadings and then granted the City's motions to dismiss the *Alexander* and *Accosta* complaints for failure to state a claim. This appeal consolidates the three separate cases.

II.

We review *de novo* the district court's order granting the motion for judgment on the pleadings. There remains some confusion, however, regarding the nature of the district court's inquiry—that is, whether the case is governed by the standard for motions to dismiss or should instead

be treated as a motion for summary judgment.[1] In *United States v. Wood*, 925 F.2d 1580 (7th Cir. 1991), this court held, seemingly without qualification, that a 12(c) motion for judgment on the pleadings is subject to the same standard as a rule 12(b)(6) motion to dismiss. *Id.* at 1581. In that event, the district court, viewing all facts in a light most favorable to the non-moving party, may grant the motion only if "it is beyond doubt that the non-movant can plead no facts that would support his claim for relief." *Id.* (citing *Thomason v. Nachtrieb*, 888 F.2d 1202, 1204 (7th Cir. 1989)); *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). The district court may not look beyond the pleadings, and all uncontested allegations to which the parties had an opportunity to respond are taken as true. *Wood*, 925 F.2d at 1581.

The defendant counters that judgment on the pleadings is, in the context of this case, more like summary judgment than like a motion to dismiss. Notwithstanding *Wood*,[2] there may be some validity to this argument. In *National Fidelity Life Insurance Co. v. Karaganis*, 811 F.2d 357 (7th Cir. 1987), this court required a party moving for judgment on the pleadings to establish that there were no material issues of fact to be resolved and that it was entitled to judgment as a matter of law. *Id.* at 358; *see*

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[1] The district court may have found rule 12(c)'s application perplexing as well; its original opinion had to be revised to indicate the correct motion it was granting. *Compare Leahy v. City of Chicago*, No. 89 C 9354, 1992 U.S. Dist. LEXIS 265 at *18 (N.D. Ill. Jan. 9, 1992) (granting "motion for summary judgment") *with Leahy v. City of Chicago*, 785 F. Supp. 724, 730 (N.D. Ill. 1992) (granting "motion for judgment on the pleadings").

[2] The City argues that the *Wood* court did not intend to work any change in the law governing rule 12(c) motions. *See* Defendant's Br. at 16 n.4. Indeed, the case that the *Wood* court cites as authority for its statement regarding the use of the 12(b)(6) standard—*Thomason v. Nachtrieb*, 888 F.2d 1202, 1204 (7th Cir. 1989)—clearly limited the application of the standard for motions to dismiss in rule 12(c) cases to situations in which the movant specifically asserted 12(b) defenses. *Id.*; *see also* discussion *infra*.

also 5A Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure* § 1368 at 530 (1990) (noting that courts will not grant a rule 12(c) motion if a material issue of fact exists); *id.* § 1369 at 535 (stating that the standard courts apply for summary judgment and for judgment on the pleadings "appears to be identical").

A defendant may use a rule 12(c) motion after the close of the pleadings to raise various rule 12(b) defenses regarding procedural defects, in which case courts apply the same standard applicable to the corresponding 12(b) motion. *Thomason v. Nachtrieb*, 888 F.2d 1202, 1204 (7th Cir. 1989); 5A Wright & Miller, § 1367 at 516 (noting that rule 12(c) can serve as an "auxiliary device" for asserting such defenses). Here, however, the City seems to use rule 12(c) in its customary application to attempt to dispose of the case on the basis of the underlying substantive merits. Defendant's Br. at 16, 20; *see also* 5A Wright & Miller, § 1367 at 509, 515 (stating that rule 12(c) is "primarily addressed to" this function). We therefore believe the appropriate standard is that applicable to summary judgment, except that the court may consider only the contents of the pleadings. *Karaganis*, 811 F.2d at 358. Thus, we take all well-pleaded allegations in the plaintiffs' pleadings to be true, and we view the facts and inferences to be drawn from those allegations in the light most favorable to the plaintiffs. *Republic Steel Corp. v. Pennsylvania Eng'g Corp.*, 785 F.2d 174, 177 n.2 (7th Cir. 1986). We will not affirm the granting of the City's 12(c) motion unless no genuine issues of material fact remain to be resolved and unless the City is entitled to judgment as a matter of law. *Karaganis*, 811 F.2d at 358.

III.

Although the FLSA does not define "work," its federal regulations set out the circumstances in which meal periods can be excluded from hours worked. Section 785.19(a) provides:

> (a) Bona fide meal periods. Bona fide meal periods are not work time. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals . . . . The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating.

19 C.F.R. § 785.19(a). For those agencies using the 7(k) exemption, section 553.223(b) provides that meal time may be excluded from hours worked on tours of duty of less than 24 hours

> provided that the employee is completely relieved from duty during the meal period, and all the other tests in § 785.19 of this title are met. On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., "stakeouts"), they are not considered to be completely relieved from duty, and any such meal periods would be compensable.

29 C.F.R. § 553.223(b).

The district court, in ascertaining whether the officers' mealtimes here are compensable work time under the FLSA, looked only to the more specific regulation, section 553.223(b), and the examples furnished there. Deciding that the Chicago officers' mealtimes "in no way resemble" section 553.223's examples involving stakeouts or confinement to barracks, the district court concluded that they are not compensable and that judgment on the pleadings was proper. *Leahy*, 785 F. Supp. at 730. This approach apparently derived from language in the Fifth Circuit case the district court relied on most heavily, *Lee v. Coahoma County*, 937 F.2d 220 (5th Cir. 1991), which similarly noted that the meal breaks at issue "in no way resemble [the section 553.223] example." *Id.* at 225.

The district court's approach falters in two ways. First, the interplay between the federal regulations is more complex than the district court acknowledges. There is no reason to assume section 553.223(b) is separate and distinct from section 785.19(a); in fact, section 553.223(b) incorporates "all the other tests in § 785.19." 29 C.F.R. § 553.223(b). A recent Tenth Circuit case, *Lamon v. City of Shawnee*,[3] 972 F.2d 1145 (10th Cir. 1992), *cert. denied*, 61 U.S.L.W. 3670 (1993), found some significance in the differences between the two regulations, but explicitly stated that its contrasting of the two sections did not mean that the "completely relieved of duty" standard is necessarily different for each section.[4] *Id.* at 1158 n.18; *see also Kohlheim v. Glynn County*, 915 F.2d 1473, 1477 (11th Cir. 1990). As a district court within the Tenth Circuit recently observed, *Lamon* "strongly implies that the 'completely relieved from duty' standard appearing in both § 553.223(b) and § 785.19 has the same meaning." *Brinkman v. Department of Corrections*, 804 F. Supp. 163, 171 (D. Kan. 1992).[5]

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[3] *Lamon*, which involved restrictions quite similar to those alleged in the present case, was decided after the district court issued its opinion in this case. The district court did, however, dismiss as distinguishable the lower court decision in *Lamon* because, in part, "there existed a genuine issue of material fact as to whether the officers had been completely relieved of duty." *Leahy*, 785 F. Supp. at 729. The court did not explain how, on analogous facts, no such genuine fact issue exists in the case before us.

[4] The dissent's characterization of *Lamon* as "relying on the Secretary's examples in section 553.223(b)" is misleading. In articulating the predominant benefit test that derives from the FLSA's traditional application in other contexts, *see, e.g. Armour & Co. v. Wantock*, 323 U.S. 126, 133 (1944), the *Lamon* court clearly did not envision section 553.223(b)'s examples as defining that standard. The *Lamon* court's refusal to decide the case as a matter of law on the same essential facts as we have here demonstrates that its understanding of the examples and ours are akin.

[5] Elaborating, the *Brinkman* court noted that

> [t]he two distinctions observed between § 553.223(b) and § 785.19 are insubstantial reasons for reading identical words differently

(Footnote continued on following page)

The examination of compensability should not turn on a crabbed comparison between the mealtime restrictions and the necessarily arbitrary, and certainly not all-encompassing, examples in the regulations. The appropriate standard is instead the one articulated in *Lamon*—a standard that sensibly integrates developing case law with the regulations' language and purpose. Under *Lamon*, a law enforcement employee is completely relieved from duty during a meal period "when the employee's time is not spent predominantly for the benefit of the employer," 972 F.2d at 1155, 1157; stated differently, the "FLSA requires remuneration for meal periods during which a police officer is unable comfortably and adequately to pass the mealtime because the officer's time or attention is devoted primarily to official responsibilities." *Id.* at 1155-56; *see also Armitage v. City of Emporia*, 982 F.2d 430 (10th Cir. 1992) (adopting *Lamon* standard).

The second and more important problem with the decision below is that it does not acknowledge the basic posture of the cases it relies upon and, in particular, the great extent to which resolution of these cases depends upon the specific circumstances surrounding departmental policies regulating meal periods. No case that we are aware of involving law enforcement personnel treats compensability as a matter for judgment on the pleadings. Nearly all of the cases, involving facts generally compar-

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[5] *continued*

in almost indistinguishable contexts. No rationale for having a less rigorous meal period standard for an employee covered under § 207(k) is offered in *Lamon*. Section 207(k) obviously is intended to address the unique employment circumstances of a law enforcement officer, fire fighter, or corrections officer. Presumably, the same circumstances justify taking the same approach to meal period times for those similarly employed whether covered by § 207(k) or not.

804 F. Supp. at 171.

able to those before us, have let the matter go to trial (either with a jury or to the court).[6]

In *Lamon*, for example, the Tenth Circuit reversed a jury verdict in favor of the plaintiffs on the basis of inadequate jury instructions.[7] The court gave no indication, however, that the evidence did not support the verdict or that a properly instructed jury that reached the same verdict at a new trial would not be upheld. Indeed, the *Lamon* court specifically stated that it did "not find that the evidence points but one way and is susceptible to no reasonable inference supporting the Plaintiffs' claim," adding that "there was sufficient evidence upon which a jury could properly have returned a verdict for the Plaintiffs on this issue." 972 F.2d at 1156. Accordingly, the court concluded that "the trial court did not err in submitting to the jury the issue of the compensability of meal periods." *Id.* at 1159.

The restrictions on the *Lamon* plaintiffs' meal periods essentially replicate those alleged in the present case. *See id.* at 1156. On their half-hour meal breaks, the City of Shawnee's police officers were required either to leave a telephone number where they could be reached or to monitor a portable radio. They had to react to emergency calls, answer to personnel shortages, respond to citizen requests, confront crimes committed in their presence and

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[6] *See, e.g., Armitage v. City of Emporia*, 982 F.2d 430 (10th Cir. 1992) (bench trial); *Lee v. Coahoma County*, 937 F.2d 220 (5th Cir. 1991) (bench trial). One case resolves the issue prior to trial on cross motions for summary judgment—though with more extensive development of the facts than has been possible here. *Wahl v. City of Wichita*, 725 F. Supp. 1133 (D. Kan. 1989). That court concluded that mealtimes are compensable in light of an array of restrictions similar to but arguably less constraining than those imposed on Chicago officers. *See* discussion *infra* pages 10-12.

[7] The *Lamon* court stated that the challenged instruction "countenanced the misapprehension that the performance of *any* official duty, no matter how insignificant, during meal periods rendered the time compensable." 972 F.2d at 1158.

act in a responsible and professional manner. Meal locations were restricted to the city limits, or, with approval, locations close to the city, and the officers were not allowed to conduct personal business errands during their meal breaks. *Id.* These restrictions cannot fairly be characterized as tighter than or substantively different from those alleged by the plaintiffs here. Thus, if the *Lamon* restrictions constituted sufficient evidence upon which a properly instructed jury could have returned a verdict for the plaintiffs, *id.*, judgment on the pleadings cannot be warranted on the facts before us.

In addition to *Lamon*, we also regard as instructive the District of Kansas's comprehensive analysis of the mealtime compensability issue in *Wahl v. City of Wichita*, 725 F. Supp. 1133 (D. Kan. 1989).[8] The restrictions in the present case, while akin to those in *Lamon*, appear to be more

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[8] Although the district court in the present case found *Wahl* to be among the two most authoritative cases, the court rejected *Wahl* because it was not a circuit court opinion and because it did not involve a section 7(k) employer. *Leahy*, 785 F. Supp. at 729-30 (finding *Wahl* "factually analogous"). Informed in part by our view that sections 553.223(b) and 785.19(a) generally address the same "completely relieved from duty" standard, *see supra* note 5 and accompanying text, we find that, in major part, the *Wahl* court's careful analysis of the compensability question is especially helpful to our task.

The case the district court ultimately relied on as most authoritative, on the other hand—a Fifth Circuit case that specifically applies section 553.223(b)—confined its examination of the meal periods' compensability to one paragraph with virtually no analysis. *Lee v. Coahoma County*, 937 F.2d 220 (5th Cir. 1991). In *Lee*, unlike the present case, the deputies were allowed to take their breaks wherever they pleased, though they would radio out once they reached their destination and were called back in an occasional emergency. *Id.* at 225. The *Lee* court, concluding that the fact findings supported the district court's fact conclusion that such meal periods are not compensable, noted merely that the meal breaks at issue were not like those in the section 553.223 examples. *Id.* at 225. We find that the authoritative value of *Lee* is impaired by its perfunctory analysis.

inhibiting than those in *Wahl*. In *Wahl*, the officers were subject to geographical limitations, were required to answer emergency calls and to respond to crimes and citizen inquiries and were restricted both in what they could read and in the personal activities or errands they could perform. *Id.* at 1136-37. Unlike the plaintiffs in the case before us, however, the officers in the *Wahl* case were not required to remain in full uniform or hence to comply with all the associated regulations of uniformed conduct, although changing out of uniform was admittedly impractical on a short lunch period. *Id.* Moreover, more than two officers—but not more than "a few"—could visit the same restaurant at once. The *Wahl* case also does not indicate that the officers were prohibited from taking meals at locations other than establishments serving food, although they were prohibited from taking meals in a tavern, private club or pool hall. *Id.* at 1136.

Wahl is unique among the reported cases on this narrow issue in that it arose prior to trial, on summary judgment. The case, however, follows a special pattern among summary judgment cases in that the parties filed cross motions for summary judgment and generated a complete record of uncontroverted facts by submitting affidavits, depositions and answers to interrogatories. Looking to section 785.19(a)'s standard as the appropriate statement of the law, the *Wahl* court concluded that the plaintiffs clearly were not completely relieved of their duties. *Id.* at 1139. The court stated that "[w]hat matters in meal period cases is whether the employee is subject to real limitations on his personal freedom which inure to the benefit of his employer." *Id.* at 1144. Moreover,

> [t]he rules of the city, both written and unwritten, and the practical constraints arising from the limited length of the break, combine to ensure the city of a reserve of uniformed officers, immediately available for emergency service. The restrictions on the plaintiffs are designed to maximize the public appearance of the officers' readiness. The city receives the advantages of improved public relations and the elimina-

> tion of the need to hire additional officers. But as these benefits accrue to the city, the officers are faced with corresponding limitations on their personal freedom.

Id.; *cf. Armour & Co. v. Wantock*, 323 U.S. 126, 133 (1944) (stating that "[r]eadiness to serve may be hired, quite as much as service itself").

In the case before us, a judge or a jury as factfinder might ultimately find for the defendant. That, however, differs vastly from ruling for the defendant on the pleadings.[9] It is not possible in the case before us or in comparable circumstances in the other reported cases to resolve factual issues and apply the appropriate standard to those facts at this early stage as a matter of law. This is not to say that resolution of the FLSA mealtime compensability issue in the countless factual configurations that might arise will always require a trial. What *is* required is sufficient development of the facts to enable a capable application of the appropriate predominant benefit standard, including a determination of whether the officers are unable to pass the mealtime comfortably because their time or attention is devoted primarily to official responsibilities.[10] *See Lamon*, 972 F.2d at 1155-56.

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[9] The dissent, by asserting that the plaintiffs are not entitled to "automatic compensation" for their meal periods, *post* at 19, seems to suggest that the plaintiffs claim entitlement to win here and now. The issue at this stage, however, is whether additional factual development is essential to a proper decision.

[10] The dissent gives great weight to the court's ruling against the plaintiffs as a matter of law in *Armitage v. City of Emporia*, 982 F.2d 430 (10th Cir. 1992), where the detectives could not conduct personal errands during lunch and were required to respond to citizen inquiries and act professionally. But of course the *Armitage* court had the benefit of a complete trial record. The *Lamon* predominant benefit test—while conceivably applicable purely as a matter of law in some instances—necessarily involves some informed appraisal of how the particular mealtime limitations actually

(Footnote continued on following page)

Moreover, although the extent to which police officers receive regular compensation whenever they actually are disturbed by official duties is not a fact of record here, we could not infer from the existence of such a policy that officers who are not affirmatively called back to duty are necessarily completely relieved of duty.[11] There is a universe of possibilities about when a meal is "interrupted" so as to require compensation. At this point we can only speculate about the frequency of communication to police officers at mealtime, the frequency and extent of interruptions, the effect of the various restrictions on an otherwise uninterrupted meal period and a variety of other factual matters. The pleadings alone simply do not reveal to what extent the officers' attention was turned to official duties.

Finally, although only the *Alexander* and *Accosta* amended complaints—but not the *Leahy* complaint—specifically allege, in addition to the basic restrictions, that supervisors' interruptions and requests by the public for assistance and information occur on a regular and frequent basis, we note that the absence of this exact language in the *Leahy* complaint does not alter our analysis with respect to those particular plaintiffs. The complaint's comprehensive catalog of restrictions makes clear without any supplementary

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[10] *continued*

affected the officers' mealtimes. Looking only to the pleadings in the present case, a court cannot competently rule as a matter of law that officers spent or did not spend their mealtime predominantly for the benefit of the employer or that their time or attention was or was not devoted primarily to official responsibilities.

[11] On a related issue, we are not persuaded by the defendants' argument that the collective bargaining agreement between the City and its police officers obviates the officers' claim by confirming those parties' understanding that meal periods are not working time within the FLSA. Although a factfinder might consider such an agreement as one among many factors in determining whether the officers were completely relieved of duty, it certainly does not outright preclude the officers' claim.

magic words that further development of the particular factual circumstances is needed before a court or jury can judge whether the officers' mealtimes are spent predominantly for the department's benefit and whether officers are unable to comfortably and adequately pass the mealtime because their time or attention is devoted primarily to official responsibilities. *See Lamon*, 972 F.2d at 1155-57. Federal notice pleading requires no more. *See* Fed. R. Civ. P. 8(a). When all reasonable inferences are drawn in favor of the officers, the allegations in each of the three complaints are sufficient to raise a viable claim, the merits of which cannot be resolved as a matter of law on these limited facts.[12]

IV.

This case is appropriately resolved by allowing the trier of fact to judge, after sufficient development of the factual circumstances, whether the officers were completely relieved of duty under the standard articulated in the recent *Lamon* case. For the foregoing reasons, we REVERSE the district court's entry of judgment on the pleadings and REMAND for further proceedings consistent with this opinion.

CRABB, *District Judge*, concurring. This is an extraordinarily difficult case, made more so by the lack of a factual record. I agree with Judge Cudahy that a more complete development of the facts is necessary to allow an informed decision on the scope of the officers' duties during their lunch breaks. In this regard, I want to add a few comments on the Rule 12(c) motion, the procedural

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[12] The City itself does not argue that the omissions in the *Leahy* complaint distinguish it from the other two complaints. In fact, it contends that the frequency of interruptions is irrelevant. Def. Br. at 19-20.

vehicle used by defendant. As this case illustrates, the motion is often confusing. Because it can be used to raise procedural defects after an answer has been filed, it resembles the motions brought under 12(b), including the motion to dismiss for failure to state a claim. It can also be used in situations in which the pleadings are complete and without defect and raise only a question of law. *See generally*, 5A Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* §§ 1367 and 1368 (1990). In this case, it appears that defendant used it in the *Leahy* case to try to resolve a question of law and that plaintiffs objected to its use, maintaining that factual development of the record was necessary to resolve the case and that their complaint was sufficient to state a claim. (In *Accosta* and *Alexander*, defendant filed 12(b)(6) motions, which were granted by the district court, relying on the disposition of *Leahy*.)

On appeal, plaintiffs argue that the district court should have applied a motion to dismiss standard to defendant's 12(c) motion in *Leahy*, that is, the district court should have considered whether any set of facts might be alleged that would support their claim. Plaintiffs seem to be arguing that the district court should not be bound by the defendant's characterization of its motion: whenever the motion is filed in a situation in which there is some question whether the complaint is sufficient on its face to state a claim, the court should apply the motion to dismiss standard.

At the outset of his opinion, Judge Cudahy declines to adopt a motion to dismiss standard when the moving party is seeking judgment as a matter of law, but he seems to revert to it at the end. At pp. 13-14, *supra*, he notes the possibility that the plaintiffs in *Leahy* might be able to show that frequent interruptions turn their lunch breaks into work time, even though these plaintiffs never made allegations to that effect in either their original or their amended complaint. If, when district courts are considering motions for judgment on the pleadings, they have an obligation to consider whether the plaintiffs could come

forward with additional facts that would state a claim, I think this should be made plain in the opinion. I would hold that whenever a defendant moves for judgment on the pleadings in any but the rare case in which the parties agree that the pleadings set out a straightforward question of law, the court should apply the motion to dismiss standard in evaluating the legal sufficiency of the pleadings.

Turning to the merits of the case, I note that much of the difficulty of this case lies in applying the "completely relieved from" standard to patrol work, which consists largely of surveillance conducted in a heightened state of readiness. The frequency of interruptions during meal periods may operate to impose a state of readiness so like that of actual patrol work as to warrant compensation during *all* meal periods. Such a state of readiness may result from the frequency of dispatcher-initiated calls, or again, departmental regulations may so constrain an officer's choice of location and activities during meal periods as to require in effect that the officer perform services commensurate with those of an officer who walks a beat. In either case, officers would not be "completely relieved from duty" within the meaning of the FLSA.

I understand Judge Cudahy to be holding that these cases should be returned to the district court to allow the plaintiffs a chance to show that the number and frequency of the actual interruptions require them to spend their lunch breaks predominantly on their employer's business. To the extent that his opinion can be read to hold that the officers have raised a triable issue of fact merely by proffering the actual departmental regulations, I disagree with it. The regulations do not affirmatively require the performance of active duties or so restrict the officer's choice of location and activities as to make his lunch break the equivalent of work time. It is the allegation of frequent interruptions that raises the possibility that the officers could show that their "attention is devoted primarily to official responsibilities" during meal periods. In the absence of such an allegation, one can presume that departmental restrictions are intended merely to facilitate readi-

ness to respond to events of limited contingency, such as an emergency call, or are otherwise incidental to an officer's on-call uniformed status. This presumption would be strengthened by a showing that a department has adopted procedures to defer calls by the dispatcher to an officer until after the officer's meal break and to otherwise insulate officers from recurrent disruptions. Conversely, this presumption would be eroded by a showing of frequent interruptions, particularly those initiated by the department, that suggest that restrictions are designed to convert meal periods into patrol time. *Lee*, 937 F.2d at 225, was decided in favor of the employer in part because evidence existed that officers were called back only in an occasional emergency. Similarly, in *Lamon*, although the department had revised its administrative code to provide that lunch periods be uninterrupted except in emergencies, officers had alleged that evening meals were frequently interrupted, that officers were frequently required to respond to emergencies, and that often officers had to forgo meals entirely. 1990 U.S. Dist. LEXIS 15906, at *5 and *16 (D. Kan. Oct. 4, 1990).

Standing alone, the restrictions alleged in *Leahy* are insufficient to raise a viable claim that these plaintiffs-appellants were not completely relieved from duty. However, I agree with Judge Cudahy that plaintiffs might be able to allege facts that would sustain their position and entitle them to relief. Applying a motion to dismiss standard to their complaint, I would give them a chance to add such allegations to their complaint and develop a factual record. In *Alexander* and *Accosta*, plaintiffs-appellants allege frequent interruptions by citizens and inspectors, although they do not allege that they are required frequently to respond to "emergency calls" or other calls by the dispatcher or to undertake other duties. Although the allegations suggest that officers remain free to undertake personal errands while on their lunch breaks, unlike the officers in *Wahl*, 725 F. Supp. 1133, 1137 (D. Kan. 1989) and *Lamon*, when all reasonable inferences are drawn in favor of the officers, the allegations support an inference that the officers' meal periods are primarily for the benefit of the employer.

BAUER, *Chief Judge*, dissenting.

The Fair Labor Standards Act ("FLSA") requires that police officers be primarily engaged in work-related duties during meal periods to warrant compensation for those meal periods. *Armitage v. City of Emporia, Kansas*, 982 F.2d 430, 432 (10th Cir. 1992). The Chicago police officers ("the Officers") claim that FLSA requires the City of Chicago ("the City") to pay them as a matter of course when the Officers do nothing more than eat during their meal periods.[1]

The majority sets out the facts alleged in the Officers' complaints. The majority does not mention, however, that the City pays the Officers overtime in accordance with the collective bargaining agreement between the Officers and the City. The agreement requires the City to pay a police officer if the officer works during a meal period. The Officers make no allegation that the City does not comply with the terms of the collective bargaining agreement. The issue in this case, then, is whether FLSA requires the City to pay the Officers during their meal period even if they do nothing other than eat during this time and adhere to the restrictions listed in the Officers' complaints. I disagree with both the majority's analysis of the regulations promulgated by the Secretary of Labor ("the Secretary") and with the majority's interpretation of decisions by other courts in similar cases. I will address each in turn.

The majority properly points out that two regulations guide our decision in this case. Both of these regulations

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[1] The Officers apparently envision the following scenario as a possibility. Two Chicago police officers park their squad car and walk into a local restaurant. They sit down, order a meal, and then spend 30 undisturbed minutes eating. Afterwards, the two officers return to their squad cars and continue their patrol duties. The Officers argue that FLSA requires the City to pay these two officers—at no less than overtime rates—for this "work." I dissent because I do not agree that such a meal period is compensable under FLSA.

interpret FLSA to mean that meal periods are not compensable when employees—here, the Officers—are "completely relieved from duty." 29 C.F.R. §§ 553.223(b), 785.19(a). The majority points out, and I agree, that the two regulations are not separate and distinct. I part company with the majority because I believe that the regulations indicate that the Officers do not allege facts that entitle them to automatic compensation for their meal periods.

Section 785.19(a), the broader of the two regulations, illustrates by example that "an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating" and therefore must be compensated under FLSA. 29 C.F.R. § 785.19(a). Similarly, section 553.223(b), which applies specifically to cases, like this one, involving law enforcement personnel, states that "[w]here law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., 'stakeouts'), they are not considered to be completely relieved from duty, and any such meal periods would be compensable." 29 C.F.R. § 553.223(b).

Taking the two regulations together, as the majority does, does not change the analysis. Both of these regulations indicate that when employees covered by FLSA, including police officers, are required to be at a particular place—at a desk, machine, barracks, or location involving extended surveillance—the employee is working and must be paid. The implication of the Secretary's examples is that when employees are not so rigidly restricted to a particular place, like the Officers here, they are not entitled to compensation under FLSA.

With no explanation and without any support from precedent, the majority announces that the examples in the regulations are "arbitrary, and certainly not all-encompassing." While I agree that the examples are not all-encompassing, I do not agree that they are arbitrary. Rather, the examples in sections 785.19(a) and 553.223(b)

represent the Secretary's reasoned judgment in interpreting FLSA. The majority errs by describing the examples contained in the regulations as arbitrary. Even if FLSA is considered ambiguous, we still must defer to the Secretary's interpretation of FLSA so long as it is based on a permissible construction of that statute. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984); *Martin v. The Refrigeration Sch., Inc.*, 968 F.2d 3, 5 (9th Cir. 1992). The majority apparently does not believe the Secretary's examples warrant even a cursory discussion. Instead, they are dismissed as "arbitrary and not all-encompassing." I believe that the Secretary's examples are based on a permissible construction of FLSA. *See Lamon v. City of Shawnee*, 972 F.2d 1145, 1157 (10th Cir. 1992) (relying on the Secretary's examples in section 553.223(b)), *cert. denied*, 61 U.S.L.W. 3620 (1993); *Lee v. Coahoma County*, 937 F.2d 220, 225 (5th Cir. 1991) (same). Sections 785.19(a) and 553.223(b)—and the examples contained therein—demonstrate that the Officers do not allege facts sufficient to show that they are so confined to a particular place during their meal periods that they should be compensated.

I similarly disagree with the majority's use of precedent. In *Lee*, for example, several deputy county sheriffs sued the defendant county for alleged violations of FLSA. On appeal, the deputies challenged the district court's finding that their meal breaks were not compensable. *Id.* at 225. The deputies claimed that FLSA required the county to pay them for their meal periods because the periods were often less than thirty minutes and the deputies could be called back to duty if an emergency arose. *Id.* The Fifth Circuit looked to the examples contained in section 553.223(b) and concluded that "[t]he meal breaks of the . . . deputies in no way resemble [these] example[s]." 937 F.2d at 225. The court added that it was "not dispositive that the deputies could be called if an emergency arose and this contingency does not mean that they remained on duty." *Id.* The court also found it insignificant that the meal periods were often less than 30 minutes. *Id.* For

these reasons, the court rejected the deputies' claims and affirmed the district court's decision that the deputies' meal periods were not compensable. *Id.* at 228.

In *Lamon v. City of Shawnee*, 972 F.2d 1145 (10th Cir. 1992), relied on by the majority, the Tenth Circuit reached a similar result in an analogous case. There, police officers sued the City of Shawnee, Kansas for alleged FLSA violations because the city did not pay them for their 30-minute meal periods. *Id.* at 1147. The court noted that the officers were relieved from duty during meal periods but, like the Officers here, had to respond to emergency calls, citizen requests, and crimes committed in their presence. *Id.* at 1149. Also like the Officers in this case, the officers in *Lamon* were required to leave a telephone number where they could be reached or to monitor a portable radio during their meal periods. *Id.*

In *Lamon*, the Tenth Circuit had to define the Secretary's "completely relieved from duty" standard in order to decide whether FLSA required the city to compensate the officers for their meal periods.[2] The court stated that in the context of FLSA section 207(k), 29 U.S.C. § 207(k)—the same statute at issue here—"a law enforcement employee is considered to be completely relieved from duty during a meal period when the employee's time is not spent predominantly for the benefit of the employer." *Id.* at 1155. The court added that "FLSA requires remuneration for meal periods during which a police officer is unable comfortably and adequately to pass the mealtime because the officer's time or attention is devoted primarily to official responsibilities." *Id.* at 1155-56.

As in *Lee*, the *Lamon* court relied on section 553.223(b) instead of the more general section 785.19(a). *Id.* at 1156-57. The court noted that section 553.223(b) illustrated circumstances "involving law enforcement personnel that

[2] As the majority points out, the "completely relieved from duty" standard is contained in both sections 785.19(a) and 553.223(b).

would run afoul, if not compensated, of the 'completely relieved from duty' standard" and pointed to the regulation's examples of "personnel required to remain on call in a barracks or similar quarters or assigned to extended surveillance duties, such as stakeouts." *Id.* at 1157 (citing *Lee*, 937 F.2d at 225). The court found those examples different from the restrictions placed on the officers in *Lamon* and found the differences "instructive."[3] *Id.* at 1157. The court therefore concluded that "a police officer must primarily be engaged in work-related duties during meal periods to warrant compensation therefor. That a police officer is on-call and has some limited responsibilities during meal periods does not perforce mean the officer is working." *Id.* at 1157. The court held that the district court had erred by ignoring section 553.223(b) and instructing the jury with language that tracked only section 785.19. *Id.* at 1156, 1158. The Tenth Circuit therefore reversed the district court's judgment in favor of the plaintiffs on the meal period issue and remanded the case for a new trial. *Id.* at 1159.

The Tenth Circuit applied *Lamon* to a suit brought by police detectives against the City of Emporia, Kansas. *Armitage v. City of Emporia, Kansas*, 982 F.2d 430 (1992). In *Armitage*, the police detectives were required to take

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[3] In full, the *Lamon* court stated:

> [Section] 553.223(b) goes on tc illustrate circumstances involving law enforcement personnel that would run afoul, if not compensated, of the 'completely relieved from duty' standard, citing the examples of personnel required to remain on call in barracks or similar quarters or assigned to extended surveillance duties, such as stakeouts. We find these differences instructive in determining the reach of the completely relieved from duty standard pursuant to § 553.223(b).

Lamon, 972 F.2d at 1157. The majority describes my characterization of *Lamon*'s reliance on the Secretary's examples in section 553.223(b) as "misleading." As the above excerpt from *Lamon* indicates, however, there is nothing misleading about my characterization of that case. The Tenth Circuit in *Lamon* clearly relied on the Secretary's examples in section 553.223(b).

an unpaid lunch break of at least 30 minutes. *Id.* at 431. The police detectives had to notify the dispatcher of their location in case they were needed, were not allowed to consume alcohol during lunch, and were required to respond to questions from the public if approached during lunch. *Id.* Also, like the Officers here, the police detectives in *Armitage* were paid at the overtime rate if they were called back to duty during lunch. *Id.* The police detectives sued the city pursuant to FLSA. After a bench trial, the district court awarded back pay for the police detectives' lunch periods. *Id.* The Tenth Circuit reversed because *Lamon* "require[d] a different outcome under these facts." *Id.* As articulated in *Lamon*, the court in *Armitage* stated that "the proper standard for determining compensability of a meal period is whether the officer is 'primarily . . . engaged in work-related duties during meal periods.' " *Id.* at 432 (quoting *Lamon*, 972 F.2d at 1157). The *Armitage* court determined that the facts, as found by the district court, indicated that the police detectives were not primarily engaged in work-related duties during their meal periods. 982 F.2d at 432. Accordingly, the court reversed the award of backpay for meal periods. *Id.* The court did not remand the case for a new trial, as in *Lamon*, but instead substituted its judgment for the district court's and instructed the district court to enter judgment for the city. *Id.* at 433.

The majority in this case accurately observes that *Lee*, *Lamon*, and *Armitage* all involved trials whereas here, the district court dismissed the Officers' complaints. The gist of *Lee*, *Lamon*, and *Armitage*, however, demonstrates that dismissal was proper. In all three cases, the courts ruled against the deputy sheriffs, police officers, and police detectives. In *Lee*, the court affirmed the district court's decision that the meal periods were not compensable. In *Lamon*, the court reversed a district court's decision that meal periods were compensable. Finally, *Armitage*—the most recent pronouncement on the issue—is perhaps the most instructive because the court in that case had the obvious advantage of interpreting and applying both *Lee*

and *Lamon*. In *Armitage*, the court simply looked at the facts, decided the case against the plaintiff police detectives as a matter of law, and ordered the district court to enter judgment for the defendant city. The *Armitage* court's conclusion that FLSA did not require the defendant city to compensate the police detectives for their meal periods is one that we should follow here. Numerous other courts have similarly interpreted FLSA. *See, e.g., Brinkman v. Department of Corrections*, 804 F. Supp. 163, 172 (D. Kan. 1992) (merely because corrections officers may be on-call and retain some other duties over their lunch period does not of necessity require compensation); *City of Univ. Park v. University Park Police Ass'n*, 766 S.W.2d 531 (Tex. Ct. App. 1989) (police officers' mealtime not compensable when mealtime break not spent predominantly for the benefit of defendant city); *Weeks v. Chief of Wash. State Patrol*, 639 P.2d 732 (Wash. 1982) (state troopers not entitled to overtime compensation for lunch hour when lunch hour was included in their salaries and when troopers were paid at time and a half rate if called out during lunch hour).[4]

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[4] I also disagree with the majority's interpretation of *Wahl v. City of Wichita*, 725 F. Supp. 1133 (D. Kan. 1989). I do not agree with the majority's assertion that the restrictions the City places on the Officers in this case are more restrictive than those in *Wahl*. In fact, I believe the opposite is true. The *Wahl* court found the following restrictions, none of which are alleged in this case: officers were prohibited from eating lunch with their wives; officers had limited reading privileges during their meal period; some officers were prohibited from going through bank drive-throughs or using automatic teller machines; other officers were not allowed to watch television or play pinball or video games. *Id.* The court therefore held that "[b]ecause the plaintiffs are subject to substantial limitations and duties during their meal periods, they are entitled to compensation for those periods under the FLSA." *Id.*

As an initial matter, *Wahl* is factually distinguishable from the instant case because the restrictions in *Wahl* are more extensive than those alleged here. Also, in *Armitage*, the Tenth Circuit observed that the district court in that case (*Armitage*) partially

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The trend is clear. FLSA does not require municipalities to pay police officers unless the officers work during their meal period—that is, unless the officers are primarily engaged in work-related duties. The facts alleged in the complaints are no different than the facts found after trial in *Lee*, *Lamon*, and *Armitage*. In fact, this is an even stronger case for the City than for the municipalities in those cases. Here, the City is bound by the collective bargaining agreement which requires that the Officers receive overtime rates when they work during their meal periods. The Officers do not allege that the City has breached the collective bargaining agreement and, absent such an allegation, I assume the City fully complies with its terms. Consequently, the City pays the Officers if they work during their meal periods and does not pay them if they do not work during their meal periods. FLSA requires no more.

There is no need for further factual development of the Officers' case when the facts alleged—taken together with the collective bargaining agreement—so clearly indicate that the City has not violated FLSA. I do not believe that the district court's already full docket should be cluttered with this case when the Officers' complaints are doomed. Finally, I do not believe that federal courts should micromanage municipal police departments when, as in this case, a collective bargaining agreement provides for a compensation plan that fully comports with FLSA's requirements and the police officers do not allege that the municipality has violated such an agreement. I would affirm the district court's dismissal of the Officers' complaints.

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[4] *continued*
relied on *Wahl* to award the plaintiff police detectives compensation for their meal periods. *Armitage*, 982 F.2d at 431. The Tenth Circuit rejected that result, noted that *Lamon* set forth the correct standard, applied that standard, and ordered the district court to enter judgment for the defendant city. *Id.* at 431-33.

APPENDIX D

[Dated January 28, 1992]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DANIEL F. LEAHY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	89 C 9354
	)	
	)	
CITY OF CHICAGO,	)	Judge George M. Marovich
a Municipal Corporation,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

In this matter Chicago police officers ("Officers") seek overtime pay for their meal breaks pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §200 - 219.[1] The City of Chicago ("City") has moved pursuant to Fed. R. Civ. P. ("Rule") 12(c) for judgment on the pleadings contending that as a matter of law the Officers are not entitled to overtime pay. For the reasons set forth below, we grant the City's motion and dismiss this matter with prejudice.

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[1] Hereafter we will refer to various provisions of the Fair Labor Standards Act as "Section ____."

BACKGROUND

The Officers are past and present members of the Chicago Police Department assigned to the patrol and traffic divisions. The Officers are assigned to eight and one-half hour shifts. One half hour of each shift is allotted to an unpaid meal break.

The Officers filed suit charging that the City's failure to compensate them for their meal breaks violates the FLSA.[2] The Officers claim their meal breaks should be compensable under the FLSA because they are not completely relieved of their duties during their meal breaks. Specifically, the Officers claim they are restricted during their meal breaks in the following ways:

a. Officers are required to remain within the district and/or sector of assignment unless prior permission to leave such area is granted by a supervisor.

b. Officers are required to carry their service weapons and remain in full uniform, if on uniform duty, and are required to adhere to all regulations concerning conduct while in uniform, such regulations include requirements that police officer employees assigned to uniform duty wear their uniform hat at all times while outdoors.

c. Officers must report their meal location to the dispatcher and are required during their meal period,

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[2] In its motion, the City argues the complaint is defective because it does not allege that the meal break is work time within the meaning of the FLSA. City's Memorandum of Law at pages 5-6. In their response, the officers seek to amend their complaint to cure this pleading defect. We grant the Officers' motion to amend the complaint, and we will construe the City's motion as being brought to challenge the amended complaint.

upon request, to terminate such meal period to respond to calls for police assistance, to answer questions, and to follow instructions from the dispatcher or superior officers.

d. Officers must report their meal location to the dispatcher and are required during their meal period, upon request, to terminate such meal period to respond to calls for police assistance, to answer questions, and to follow instructions from the dispatcher or superior officers.

e. Officers assigned to a two person unit are to take their meal period with both officers taking such period at the same time and location.

f. Meal periods may not be taken during the last hour of a shift assignment.

g. Police officer employees are required to refrain from conduct deemed by the department to be unbecoming of a police officer while on duty. Such conduct has, on occasion, been defined to include playing golf, reading nondepartment publications, resting or napping, or other conduct deemed by the Department to be inappropriate or tending to reflect poorly upon the uniform.

h. Officers must refrain from the consumption of alcoholic beverages.

i. Officers must respond to requests for assistance or information from members of the public.

j. Officers must refrain from congregating, which is defined that no more than two officers may be present in the same establishment without prior permission.

k. Officers who have assigned portable radio units must maintain the radio units with them and remain in radio contact and respond to calls or requests for information on such radios.

l. Officers are subject to report and review by inspectors and other supervisory personnel.

m. Officers must respond to citizen or police emergencies.

n. Officers not assigned to portable radio units must spend their meal period at a location where they can be reached by telephone, must provide the dispatcher with the telephone number and must respond to calls or requests for information on such telephones.

o. Officers must receive permission from the dispatcher to take a meal period and such permission may be and frequently is denied depending upon the workload of the district and the availability of other police officers to respond to calls.

Officers' Amended Complaint at pages 3-5.

The City argues that the meal break restrictions are not sufficient as a matter of law to establish that the meal periods are compensable work time under the FLSA.

DISCUSSION

A motion for judgment on the pleadings may be granted only if the moving party clearly establishes that no material issue of fact remains to be resolved and that he or she is entitled to judgment as a matter of law. *National Fidelity Life Ins. Co. v. Karaganis,* 811 F.2d 357 (7th Cir. 1987). The court may consider only matters presented in the pleadings and must view the facts in the light most favorable to the non-moving party. *Id.* The court, however, is not bound by the non-moving party's legal characterizations of the facts. *Id.* In considering this motion, therefore, we assume the facts as alleged by the Officers to be true.

The FLSA requires employers to pay overtime to employees who work more than forty hours per week. Section 207(a). However, Section 207(k) creates an exception to the standard wage and hour provisions of the FLSA. (Hereafter we will refer to Section 207(k) as §7(k).) Under that section, public law enforcement and fire departments can declare work periods from seven to twenty-eight consecutive days. Employees working within a twenty-eight day work period are entitled to overtime if they work in excess of 171 hours within that period.

The City has elected to pay the Officers on the basis of a twenty-eight day work period, and the parties agree that if the Officers work more than 171 hours within that period, they are entitled to overtime pay. The sole issue before us is whether the Officers' meal period is work time which should be included within the 171 hour calculation.

The FLSA does not define what is considered work under the Act; Congress left that decision to the courts. *Hill v. United States,* 751 F.2d 810, 812 (6th Cir. 1984), *cert. denied,* 474 U.S. 817 (1985). And neither the Seventh Circuit nor any district court in the Northern District has construed the meaning of meal time in the context of an FLSA lawsuit by employees seeking overtime pay for meal breaks against a §7(k) employer. We will examine two interpretive guides, the federal regulations and analogous cases from other jurisdictions, to assist our inquiry.

Two regulations speak to our issue.[3] The first regulation 29 C.F.R. §553.223(b), provides that mealtime can be excluded from hours worked under the following circumstances:

> If a public agency elects to use the section 7(k) exemption, the public agency may, in the case of law enforcement personnel, exclude meal time from hours worked on tours of duty of 24 hours or less, *provided that the employee is completely relieved from duty during the meal period, and all the other tests in §785.19 of this title are met.* On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., "stakeouts"), they are not considered to be completely relieved from duty, and any such meal periods would be compensable. (emphasis added)

29 C.F.R. §533.223(b) (hereafter cited as §533.223(b)). The text of section 785.19(a), which is not limited to §7(k) cases, states as follows:

> (a) Bona fide meal periods. Bona fide meal periods are not work time. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. *The employee is not relieved if he is required to perform any duties,*

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[3] While regulations are not binding on the court, they nonetheless offer a useful and fair standard by which courts can determine whether a meal period should be considered work time under the FLSA. *Wahl v. Wichita*, 725 F. Supp. 1133, 1138-39 (D. Kan. 1989).

> *whether active or inactive, while eating.* For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. (emphasis added)

29 C.F.R. §785.19(a) (hereafter cited as §785.19(a)). Of note is that both regulations contain the same "completely relieved of duty standard" to determine when meal breaks are considered bona fide meal periods and thus are not compensable. However, the regulations use radically different examples to describe when an employee is not completely relieved of duty. Section 785.19(a), arising from the more general section of the regulations applicable to all FLSA actions and entitled Part 785 Hours Worked, uses as an example of an employee not completely relieved from duty an office employee who is required to eat at his desk or a factory worker who is required to be at his machine while eating. §785.19(a). In contrast, §553.223(b), arising from the specific section of the regulations applicable to §7(k) employers and entitled Part 553—Application of the Fair Labor Standards Act to Employees of State and Local Governments, uses as an example of an employee not completely relieved from duty a law enforcement officer who is required to remain on call in barracks or similar quarters, or is engaged in extended surveillance activities. Neither of these examples is analogous to our situation; however, both regulations, and their respective examples, are cited by analogous cases from other jurisdictions.

Cases from other jurisdictions have attempted to define when an employee is completely relieved from duty so that the meal break is not considered work time. These cases reach a variety of conclusions based upon the specific type of employment and the nature and number

of restrictions on the meal break. We have reviewed all of the cases cited by the parties, and those cases for the most part can be grouped into four broad categories.

The first category includes postal workers. *See, e.g., Hill v. United States,* 751 F.2d 810 (6th Cir. 1984), *cert. denied,* 474 U.S. 817 (1985). The second category includes firefighters and emergency medicine personnel. *Kohlheim v. Glynn County,* 915 F.2d 1473 (11th Cir. 1990). The third category includes law enforcement officers whose jurisdiction is limited to a specific building or buildings and who function more in the nature of security guards. *See, e.g., Agner v. United States,* 8 Cl. Ct. 635, 638 (1985), *affirmed without opinion,* 795 F.2d 1017 (Fed. Cir. 1986). The final category includes typical law enforcement officers with broad jurisdiction within a campus, municipality, county, or state. *See, e.g., Lee v. Coahoma County,* 937 F.2d 220 (5th Cir. 1991).

As we conduct our analysis, we find that only those cases in the final category are authoritative. Postal workers' meal breaks may be interrupted; however, they are rarely interrupted to respond to emergencies. While required to respond to emergencies, firefighters and emergency medical personnel typically do so out of a centralized station to which they must return. They generally do not patrol the streets and therefore are not analogous to our situation involving patrol officers. Likewise, law enforcement personnel with jurisdiction limited to a building or buildings do not patrol streets and therefore are also not similarly situated to the Officers here. We therefore only look to the final category of cases as analogous to our situation.

The most persuasive authority for the City's position is a case handed down by the Fifth Circuit after the parties

briefed this motion. *Lee v. Coahoma County*, 937 F.2d 220 (5th Cir. 1991).[4] In *Lee*, sheriff's deputies brought suit against Coahoma County for overtime wages for meal breaks. Like our plaintiffs, the deputies were law enforcement officers who patrolled within the county's jurisdiction. While on patrol, the deputies would take meal periods on a "catch as catch can" basis. *Lee*, 937 F.2d at 225. They were required to radio out when they took their meal breaks, and they could be called back to duty in the event of an emergency.

The Fifth Circuit upheld the district court's decision that the twenty-minute meal breaks were bona fide meal periods and were not compensable under §7(k). *Lee*, 937 F.2d at 225. As an interpretive guide, the Fifth Circuit cited to §553.223. In particular, the Fifth Circuit quoted §553.223(b)'s example of compensable meal periods, (law enforcement personnel must remain on call in barracks or be engaged in surveillance activities) and compared the deputies' meal breaks to that example. The *Lee* court held that the deputies' meal breaks in no way resembled the example found in §553.233. *Id.* The court found that it was not dispositive that the deputies could be called if an emergency arose, and that contingency did not mean that they remained on duty. *Id.*

In its memoranda, the City cites a number of cases, all but one of which we find distinguishable. Three of the cases are distinguishable because they do not fit within

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[4] If neither the Supreme Court, nor any court in our jurisdiction, has spoken to an issue, it is this court's preference to use as authority for interpreting federal statutes analogous cases first from other circuits and then from other district courts. If a federal case has spoken to the issue, we generally do not look to analogous state case law.

the category of cases we find are analogous. *Hill v. United States,* 751 F.2d 810 (6th Cir. 1984), *cert. denied,* 474 U.S. 817 (1985) (postal carriers); *Baylor v. United States,* 198 Ct. Cl. 331 (1972) (building security guards); *Agner v. United States,* 8 Cl. Ct. 635 (1985), *affirmed without opinion,* 795 F.2d 1017 (Fed. Cir. 1986) (special police force for the Library of Congress). *Atteberry v. Ritchie,* 243 Kan. 277, 756 P.2d 424 (1988), can be distinguished because it involved a negotiated employment agreement which specifically addressed the issue of compensation during meal periods. *Atteberry,* 756 P.2d at 429. The *Atteberry* Court primarily relied on contractual, not statutory, principles in resolving the dispute.

Finally, the City cites to a Texas Appellate Court case which is directly on point. *University Park v. Univ. Park Police Ass'n,* 766 S.W.2d 531 (Tex. App. 1989). In *University Park,* the police officers had identical restrictions on their meal periods as the restrictions at issue here.[5] Nonetheless, the Texas court held that the meal periods were not compensable because the meal breaks were not predominately spent for the benefit of the city and could be used for the employees' own use and purposes. *University Park,* 766 S.W.2d at 537. Because *University Park* arises from the Texas Appellate Court, we look pri-

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[5] The police officers were not permitted to take a meal break during the first or last hour of their tour of duty; they had to notify a dispatcher before taking a meal break; the dispatcher could refuse to authorize a meal break at that time if other officers were already taking meal breaks; the officers could only eat within the city limits or within one-half mile of the city limits; they had to remain in uniform and maintain weapons and portable radios; and the officers had to respond to calls.

marily to *Lee* as the most influential case in support of the City. (See footnote four.)

Likewise, as we analyze the Officers' response, we primarily focus on the two analogous federal cases cited in their brief.[6]

The first case, *Wahl v. Wichita,* 725 F. Supp. 1133 (D. Kan. 1989) involved Wichita police officers' successful efforts in obtaining overtime pay for their thirty-minute meal periods. *Wahl* is factually analogous to our situation in that restrictions on the Wichita officers' meal periods are similar to those at issue here.[7] The *Wahl* court cited to §785.19(a), the more general regulation, for the rule that an employee must be completely relieved of duty for the meal time to be noncompensable. Given the restrictions placed upon the meal periods, the *Wahl* court held that the officers were not completely relieved of duty during their meal breaks and thus were entitled to be paid for that time. *Wahl,* 725 F. Supp. at 1144.

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[6] We again disregard those federal and state cases which do not involve law enforcement officers with jurisdiction over a campus, municipality, county, or state. *Kohlheim v. Glynn County*, 915 F.2d 1473 (11th Cir. 1990) (firefighters); *Donovan v. Bel-Loc Diner, Inc.*, 780 F.2d 1113 (4th Cir. 1985) (meal periods of waitresses at all-night diners); *Lindell v. General Electric Company*, 44 Wash. 2d 386, 267 P.2d 709 (1954) (meal periods for security guards of nuclear power plants).

[7] The Wichita police could be denied meal breaks due to work load, had geographic restrictions on the locations they could take their meal, had to remain in radio contact throughout their meal break, could only have two vehicles in the same location at the same time, were subject to emergency calls and had to respond to citizens' questions. *Wahl*, 725 F. Supp. At 1136-37.

In the next case, *Lamon v. City of Shawnee,* 30 WH Cases 146 (D. Kan. October 30, 1990), the district court denied the defendant's motion for summary judgment because there existed genuine issues of material fact regarding whether the police department had adopted a §7(k) payroll scheme. Furthermore, there existed a genuine issue of material fact as to whether the officers had been completely relieved of duty. Thus, the case is distinguishable.

The remaining cases cited by the Officers are state court opinions involving state and municipal wage statutes. *Madera Police Officers Assn. v. City of Madera,* 36 Cal. 3d 403, 682 P.2d 1087 (1984) (California Supreme Court specifically declined to reach the FLSA issue and instead decided the case under municipal regulations); *Prendergast v. Tempe,* 143 Ariz. 14, 691 P.2d 726 (Ariz. App. 1984) (Arizona Appellate Court held meal periods were compensable under state statute and municipal ordinance); *Rogers v. City of Scottsdale,* 25 WH Cases 251 (Ariz. Superior Court 1980) (Arizona Superior Court held meal periods were compensable under state statute and municipal ordinance); *Los Angeles Fire & Police Protective League v. Los Angeles,* 23 Cal. App. 3d 67 (1972) (California Appellate Court held lunch periods not compensable under municipal regulations).[8]

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[8] These cases concern state wage statutes similar to the FLSA, and some of these cases cite to federal cases interpreting the FLSA as a guide for interpreting equivalent state statutes. *Rogers,* 25 WH Cases at 252 and *Prendergast,* 691 P.2d at 731. However, for reasons stated in footnote four, we do not find these state cases as authoritative as federal cases interpreting the FLSA.

In our final analysis, we are left with two cases which we find most authoritative, *Lee* and *Wahl*. We choose to follow *Lee* over *Wahl* for two reasons. First, *Lee* is the higher court and the most recent pronouncement on the issue. The Seventh Circuit instructs district courts to "give respectful consideration to the decisions of the other courts of appeals and follow them whenever we can." *Colby v. J.C. Penny Co., Inc.*, 811 F.2d 1119, 1123 (7th Cir. 1987); *Richards v. Local 134, Intern. Broth. of Electrical Workers*, 790 F.2d 633, 636 (7th Cir. 1986). We understand this instruction as suggesting that district courts defer to another circuit's analogous opinion instead of another district court's view. *Cf. Richards*, 790 F.2d at 636 (although decisions of other circuits are not necessarily controlling, district courts should give them substantial weight especially when they reject opinions from other districts upon which the district court seeks to rely). While it is true that *Lee* has not specifically rejected *Wahl*, it is clear that these opinions reach opposite conclusions based upon analogous facts. We thus adhere to the Seventh Circuit's instruction and choose to follow *Lee*.

Second, *Lee*, as in our situation, involved a §7(k) employer; *Wahl* did not. While we suspect that the *Wahl* court might not have changed its result had the Wichita Police Department adopted a §7(k) payroll scheme, it would likely have been forced to at least change its analysis in one significant way.

In *Lee* and *Wahl*, both courts relied upon federal regulations to guide them in their interpretations of the FLSA. *Lee*, 937 F.2d at 225; *Wahl*, 725 F. Supp. at 1138-39. Because *Wahl* did not involve a §7(k) employer, it cited to the more general regulation: §785.19(a). *Lee*,

however, cited to the more specific §553.223(b) and used the example provided in that section as the basis for its decision. We likewise will look to the more specific regulation, §553.223(b), and the Fifth Circuit's application of that regulation in *Lee*. We find that the restrictions on the Officers' meal breaks, as described in the amended complaint, in no way resemble the type of restrictions described in §553.223(b) even when we view the restrictions in a light most favorable to the officers. We therefore find the Officers' meal breaks, as described in the amended complaint, are not compensable work time under the FLSA.

CONCLUSION

For the reasons set forth above, we grant the Officers' motion to amend their complaint, and we grant the City's motion for judgment on the pleadings.

ENTER:

/s/ George M. Marovich
GEORGE M. MAROVICH
UNITED STATES DISTRICT JUDGE

DATED: January 28, 1992

APPENDIX E

STATUTES AND REGULATIONS INVOLVED

29 U.S.C. Section 207. Maximum hours

(a)(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed; and

(b) No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representative of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks; or

(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed no more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty hours (or not less than forty-six weeks at the normal

number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) of this section or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

(3) by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if—

(A) the annual gross volume of sales of such enterprise is less than $1,000,000 exclusive of excise taxes,

(B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

(C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale,

and such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 206 of this title,

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek,

as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

. . .

(k) Employment by public agency engaged in fire protection or law enforcement activities

No public agency shall be deemed to have violated subsection (a) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

29 C.F.R. 773.19(a)

(a) Bona fide meal periods. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals . . . . The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating.

APPENDIX F

Plaintiffs-Petitioners in *Leahy v. City of Chicago*

ABBOTT, DALE E.
ABELS, KENNETH L.
ABRAMS, HENRY L.
ABREU, RICARDO
ACCARDO, ROSEMARY
ACCETTURA, ROCCO J.
ACEVEDO, MANUEL
ACEVEDO, MARIE
ACEVEDO, CLARISSA
ACEVEZ, CLEMENTE R.
ACOSTA, PHYLLIS A.
ADAMS, DONNA
ADAMS, JAMES J.
ADAMS, LLOYD J.
ADAMS JR., RAYMOND T.
ADCOCK, CARMEN Y.
ADDESSO, CHARLES
ADE, DONALD J.
ADE, JAMES
ADKINS, DAVID A.
ADORJAN, EDWARD W.
AGIN, LAURA M.
AGUILAR, RICHARD L.
AGUINAGA, JOHN P.
AGUINAGA, JOSEPH C.
AGUIRRE, JOSEPH R.
AHERN, JOHN J.
AIKIN, LAWRENCE J.
AKINS, DARYL
ALBANESE, PETER
ALBANO, DANIEL J.
ALBANO, LOUIS
ALBATS, RICHARD E.
ALBEE, RONALD W.
ALBERTS, CHRIS R.
ALBERTS, SCOTT M.
ALDAY, MARTHA S.
ALDER, RICHARD E.
ALDERSON, STEWART B.
ALDRICH, KEITH W.
ALESSIA, ADOLPH
ALEXANDER, ANNIE
ALI, KARIEM A.
ALKOVICH, WILLIM J.
ALLEN, CALVIN E.
ALLEN, DAVID
ALLEN, VALERIE L.
ALLISON, CHARLES D.
ALLOTTA, JAMES D.
ALLY, JALAL M.
ALMAGUER, XAVIER
ALMANZA, LEROY
ALSTON, EMMITT A.
ALTMAN, DALE S.
ALTMAN, EDWARD G.
ALTMAN, THOMAS F.
ALVARADO, GEORGE
ALVERIO, LUIS A.
ALVIZU, ANTHONY R.
AMARI, LOUIS V.
AMATI, MARK
AMATO, FRANK
AMATORE, JAMES V.
AMBRIZ, LORRAINE
AMELIO, ANTHONY P.
ANASEWICZ, PAUL
ANAST, MICHAEL G.
ANDERSEN, TAMI L.
ANDERSON, ALBERT
ANDERSON, ARNOLD L.
ANDERSON, DEVON M.
ANDERSON, DONALD H.
ANDERSON, DOROTHY L.
ANDERSON, DOUGLAS M.
ANDERSON, HOWARD
ANDERSON, JOHN E.
ANDERSON, KEVIN B.
ANDERSON, KIM K.
ANDERSON, LINDA S.
ANDERSON, MARIANNE Y.

ANDERSON, ROBERT F.
ANDERSON, ROBERT M.
ANDERSON, ROBERT S.
ANDERSON, ROBERT W.
ANDERSON, RONALD W.
ANDERSON, ROBERT W.
ANDERSON JR., THOMAS A.
ANDERSON II, EDGAR B.
ANDERSON JR., BRUCE
ANDERSON JR., TALMAY
ANDREWS, JOHN R.
ANDREWS, WAYNE
ANDRICOPOULOS, THOMAS P.
ANDRIKOKUS, GEORGE
ANDRUZZI, JOSEPH J.
ANDRUZZIJR., JOSEPH J.
ANGARONE, JOSEPH
ANGARONE, MICHAEL
ANGELO, DEAN C.
ANGELO, PATRICK J.
ANGELO, THOMAS M.
ANGONE, THERESA
ANHALT, JAMES W.
ANNERINO, JOSEPH F.
ANTELEK, STEPHEN W.
ANTHOS, ROSS J.
APARO, MARY ANN
APPLE, RICHARD P.
ARBATAITIS, ROMAS
ARCHER, ROBERT
ARCHULITA, RALPH C.
ARGENTINE, FRANK W.
ARGENTINO, KATHLEEN F.
ARGUIJO, ARTHUR T.
ARJONA, JUAN L.
ARMATA, RON
ARMISTEAD, LEON
ARMSTRONG, DERRICK L.
ARNDT, AUDREY A.
ARNOLD, HENDERSON A.
ARNOLD, JOHN G.
ARNOLD, LUTHER D.
ARNOLD, PEGGY J.
ARNOS JR., WILLIAM J.
ARVESEN, WALTER
ASBURY, TERRY C.
ASH, LEONARD
ASHE, LAWRENCE J.
ATHERTON, DANIEL R.
ATHINAKIS, ALAN J.
ATILANO, JESSE J.
ATILES, JOHN
ATKINS, BETH T.
ATKINSON, ELMER J.
AUGLE, RAYMOND T.
AUGUSTINE, LAWRENCE L.
AUGUSTINE, WAYNE L.
AUGUSTINE JR., LAWRENCE C.
AUGUSTYN, GEORGE E.
AUGUSTYN, LARRY J.
AVALOS, SHIRLEY
AVENT, MARY C.
AVERY, RODNEY D.
AVILA, JOSEPH C.
AVILA, JOSEPH E.
AVILES, DAVID
AYALA, MICHAEL
AYE, LAURA
AYE, ROBERT F.
AYERS, THOMAS F.
AZARA, JOHN T.
AZTLAN, RICHARD M.
AZZARO, DONALD J.
BABET, WILLIAM T.
BABICH, ROBERT P.
BABICZ, ROBERT E.
BABUSCH, JOHN N.
BACH, CHESTER R.
BACH, JAMES N.
BAGANS, AMY V.
BAGNALL, THOMAS
BAHR, KEVIN T.
BAIETTO, ROBERT H.
BAIKIE, ROBERT T.

BAILEY, LESTER A.
BAIO, JOHN R.
BAIOCCHI, GERALYN M.
BAIOCCHI, GREGORY
BAIOCCHI, RENO J.
BAKA, MICHAEL
BAKER, CLINTON R.
BAKER, MICHAEL A.
BAKER, RICHARD M.
BAKSINSKI, EDWARD
BALCITIS, CHARLES
BALCITIS, SHARON L.
BALDREE, WILLIAM F.
BALDWIN, JOHN R.
BALDWIN, KEVIN P.
BALDWIN JR., MATTHEW P.
BALDWIN, JAMES
BALESH, ROBERT J.
BALICE, VITO M.
BALICKI, LYLIA
BALIMER, CHARLES E.
BALL, JOHN E.
BALL, KIRBY
BALLARD, MICHAEL
BALTAZAR, DAVID P.
BALZANO, FRANK
BANACH, LOUIS R.
BANASH, DENNIS
BANKS, CHARLES H.
BANKS, LEON
BANKS, STANLEY
BARA, JOSEPH C.
BARAJAS, RICHARD H.
BARAN, JEANETTE F.
BARAN, RUSSELL J.
BARANGO, ANTHONY
BARANOWSKI, CANDYCE
BARANOWSKI, GARY W.
BARHAM, FRED L.
BARILEAU, THOMAS
BARKOWSKI, EDWARD A.
BARNA, MELVIN C.
BARNAS, STEPHEN S.
BARNES, DONALD E.
BARNES, DONNA J.
BARNES, KELLY M.
BARNES, MAURICE
BARNES, ROBERT N.
BARNETT, THOMAS J.
BARNEY, JANICE D.
BARNHILL, GORDON A.
BARONAITIS, VIDA
BARRETT, HELEN I.
BARRETT, MARTIN M.
BARRETT, SUSAN M.
BARRETT, FREDRICK E.
BARRIENTOS, STEVE
BARRINS, PATRICK
BARRIOS, DAVID M.
BARRON, JACK J.
BARRON JR., WILLIAM P.
BARRY, DONALD J.
BARRY, DOROTHY R.
BARRY, TIMOTHY J.
BART, JAMES
BARTH, TERESE J.
BARTHEL, DONALD R.
BARTHEL, MICHAEL J.
BARTIK, ROBERT A.
BARTKOWIAK, JAMES
BARTKOWIAK, ROBERT P.
BARTMAN, RONALD
BARTOLI, LAWRENCE
BARTON, DONALD P.
BARTON JR., VINCENT T.
BARTOSIK, ALOYSIUS A.
BARTOSIK, JAMES E.
BARTOSZEWSKI, DANIEL D.
BARZYDLO, GEORGE E.
BASIL, GREGORY J.
BASSIE, RANDALL B.
BASTIE, JOSEPH P.
BATES, PHILLIP G.
BATES, TYRONE
BATES JR, CLIFTON A.
BATEY JR., CHESTER M.

BATKA, JAMES
BATOR, CARL F.
BATRICH, RICHARD J.
BATSON, BARRY
BATSON, JOHN E.
BATTAGLIA, CATHERINE
BATTAGLIA, JOSEPH A.
BATTALINI, ROBERT J.
BATTIATO, RAYMOND
BATTISTELLA, JOHN
BAUER, JACK
BAUMANN, FRANK
BAUMANN, LEROY C.
BAUTISTA, ALFONSO
BAXTER, WILLIAM C.
BAY, ROGER
BEAL, CAROL A.
BEAL, MICHAEL D.
BEALE, EDWARD C.
BEAM, GERALD T.
BECKER, JEFFERY N.
BECKER, JOHN W.
BECKER, WARREN P.
BEDIA, ALFRED G.
BEDIA, LILIAN
BEDNARZ, RICHARD J.
BEESON, GREGORY
BEHLING, RONALD J.
BEHNKE, JOHN R.
BEHNKE, RAYMOND J.
BEILKE, JEFFERY R.
BELICE, MICHAEL J.
BELL, JOSEPH D.
BELL, KENNETH D.
BELL, KENNETH W.
BELL, MARVIN L.
BELL, RAYMOND A.
BELL, RONALD L.
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BICKNELL, GEORGE A.
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BONNER, THOMAS J.
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BORGINI, CONSTANCE C.
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BOWNESS, GEORGE W.
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BOYD, EDDIE L.
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BOYD, LEBERT
BOYD, THOMAS E.
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BOYLE, LESLIE A.
BOYLE, PHILIP J.
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BOYNES, MECHELL D.
BOZINOVICH, ROBERT
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BRADLEY, CLARENCE
BRADLEY, VERNON J.
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BRANDENBURGER, CLYDE S.
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BRANDYS, ANTHONY S.
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BRANNON JR., CLINT
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BRENDAL, WALTER J.
BRENNAN, BERNARD J.
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BRENNAN, ROBERT E.
BRENNER, GAYLE
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BROWN, EDWARD L.
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CALLAGHAN, BARBARA
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CAMPBELL, BRUCE D.
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CAMPBELL, WAYNE C.
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CANTERBURY, LARRY W.
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CAP, WALTER K.
CAPASSO, SAMUEL J.
CAPESIUS, JAMES J.
CAPESIUS, MICHAEL C.
CAPETILLO, JOSE M.
CAPORUSSO, NOEL T.
CAPPARELLI, JOHN T.
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CAPPITELLI, PHILIP L.
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CARIDINE, EDDIE
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CARLSON, ROLAND W.
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CARRION, ROBERT
CARRIZALES, FELIX J.
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CARROLL, RUSSELL R.
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CARSON, MILTON K.
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CARTER, FREDDIE
CARTER, JAMES R.
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CARTER, KEITH B.
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CASCARANO, JAMES L.
CASEY, DANIEL E.
CASEY, JEROME W.
CASEY, LAWRENCE J.
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CASEY, MICHAEL J.
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CASTO, STEPHEN
CASTREJON, ARTHUR L.
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CELANI, SCOTT A.
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CELLA, LOUIS A.
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CEPEDA JR., THOMAS
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CERRENTANO, VINCENT P.
CERVEN, TIMOTHY E.
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CHMIEL, JAMES
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CIEPP, KATHY
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CLANCY, WILLIAM J.
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CLARK, HOWARD J.
CLARK, JAMES R.
CLARK, ROBERT J.
CLARK, TERRY
CLARK, THOMAS J.
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CLINE, THOMAS J.
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COLE, JON W.
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COLLINS, MARY L.
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COLLINS, THOMAS J.
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CONTRERAS, JOSIE G.
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CRAVEN, RONALD B.
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DAVIS, LORELEI M.
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DAVIS, ROY W.
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DAVIS, THEODORE R.
DAVIS, WILLIAM B.
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DAWSON, JON V.
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DAY, JOHN J.
DAY, RONALD A.
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DE MARS, LEON B.
DE RON, RAYNALD
DE ROSA, PAUL M.
DE VANCE, RONNIE
DE WHITE, NORMAN
DE YOUNG, DARRYL R.
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DEANGELES, LEONARD F.
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DECKER, MICHAEL V.
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DEELEY, PATRICK J.
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DELIA, VICTOR A.
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EPSTEIN, RICHARD W.
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EVANS, JASPER
EVANS, LYLE C.
EVANS, RAYMOND J.
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EVANS, VINCENT C.
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EVANS, NELSON E.
EVANS, JAMES M.
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FABINO, TERRENCE E.
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FARRELL, JERRY
FARRELL, JOHN J.
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FARRELL, THOMAS E.
FASON, JOHN W.
FASSETT, BRIAN A.
FAULKNER, BRIAN J.
FAUST, ROBERT A.
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FEINSTEIN, BERNARD
FELDE, ROBERT A.
FELDMAN, MARSHA S.
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FELICIANO, EDWARD A.
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FELKER, CAMILLE
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FENCL, DENNIS
FENLON, LAWRENCE J.
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FENNESSY, JAMES A.
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FERET, NORBERT W.
FERGUSON, CAROLE
FERGUSON, MICHAEL R.
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FINLON, JOEL W.
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FITZGERALD, JOHN E.
FITZGERALD, MICHAEL W.
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FITZGIBBON, CATHERINE
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FITZPATRICK, CHARLES W.
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FITZSIMMONS, JOHN F.
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FLAHERTY, MARY
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FLAHERTY, WILLIAM J.
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FLANAGAN, THOMAS J.
FLANIGAN, THOMAS
FLANNERY, MICHAEL P.
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FLAVIN, GERALD THOMAS
FLAVIN, JAMES M.
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FLOOD, THOMAS J.
FLOORE, JAMES R.
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FLORES, SAMUEL
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FLORESS, JOSEPH A.
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FOLEY, DONALD R.
FOLEY, LAWRENCE J.
FOLEY, PATRICK T.
FOLEY, WILLIAM
FOLEY, WILLIAM F.
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FOLLMER SR., JOSEPH M.

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FORD, BRUCE L.
FORD, CARL R.
FORD, CHARLES L.
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FORD, KEVIN J.
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FORTE, ROGER G.
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FOSTER, PARTICIA A.
FOSTER, TYRONE N.
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FOWLER, KEITH J.
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FRANK JR., ALBERT M.
FRANKLIN, KATHRYN B.
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FRANTZ, MICHAEL J.
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FRIEDLIEB, JEFFREY M.
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FRITZ, RICHARD A.
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FRONCZAK, ROBERT R.
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FULLER, STEPHEN
FULLER, THOMAS P.
FUMO, JOHN
FUQUA, DONALD S.
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GATZ, FRANK J.
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GEHRKE , LEE
GEIB, FRANK W.
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GENTILE, JOSEPH
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GREEN, MARAGARET A.
GREEN, MARY ANN
GREEN, RICHARD L.
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HACEK, MICHAEL J.
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HARRIS, CHARLES J.
HARRIS, DALE J.
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HARRIS, JOSEPH E.
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HARTFORD, PATRICIA A.
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HUDSON, THOMAS J.
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JACK, NEAL J.
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JACKSON, ELTON L.
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JACKSON, HENRY
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JACKSON, ROBERTO
JACKSON, SHEILA A.
JACKSON, STEPHEN J.
JACKSON, VENDETTA J.
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JACKSON III, GEORGE W.
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JACOBS, DANIEL L.
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JACOBS, MICHAEL R.
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JACOBSON, KENT D.
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JOHNSON, MARCIA E.
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JONES, IRENE E.
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JONES, RICHARD H.
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JONES, ROY E.
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KARAS, ALEXANDER
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KROPEL, JOSEPH J.
KRUEGER, ALBERT E.
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KURTOVICH, STEVEN
KURZ, ROBERT
KUSH, GERALD J.
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LACNY, ROGER E.
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LAJEWSKI, ROBERT J.
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LANE, JAMES E.
LANE, MARIE J.
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LANG, JOHN H.
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LANGE, JOSEPH H.
LANGE, WILLIAM W.
LANGONE, ANTHONY J.
LANIER, JR., GLENN E.
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LAPINSKI, RICHARD H.
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LARA, JOSE
LARCHER, PETER J.
LARGENT, LARRY G.
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LARSON, DENNIS W.
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LASH, MICHAEL
LASKA, JAMES W.
LASKERO, JOSEPH
LATHAM, THOMAS
LATKOWSKI, EILEEN
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LEE SR, JIMMY L.
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LOPEZ, RAUL S.
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LOPEZ, SIGFREDO L.
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LOWE, FREDERICK J.
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LUBE, DOROTHY E.
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LUPI, JAMES V.
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LUX, LINDA
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LYNCH, IRA S.
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LYNCH, THOMAS
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LYNN, TERRENCE P.
LYNN, TIMOTHY W.
LYONS, BEVERLY A.
LYONS, BRIAN D.
LYONS, JOHN J.
LYONS, ROBERT C.
LYSIAK, NORMAN
LYZA, CARL T.
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MACKEY, HORACE C.
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MADDEN, JR., BIRL F.
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MADISON, SUSAN
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MAGLAYA-GARCIA, JUDITH A.
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MAGRO, RONALD
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MAHER, MICHAEL W.
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MAHONEY, RICHARD A.
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MAIER, JOHN
MAIESE, EDWARD
MAINES, MICHAEL H.
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MAJERCZYK, BRUCE E.
MAJEWSKI, SIGMUND A.
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MAKOWSKI, GARY E.
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MALABARBA, ROBERT W.
MALACHESEN, PAUL W.
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MALLOY, BERNARD W.
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MALUCHNIK, VICTORIA J.
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MANCHA, RICARDO
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MANLEY, MICHELE L.
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MANN, KENNETH E.
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MANNING, WAYNE J.
MANNION, PHILIP
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MARCELAK, THEODORE F.
MARCH, DAVID M.
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MARCIAL, THOMAS J.
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MAREK, KATHLEEN M.
MARES, ACHILLES L.
MARGELEWSKI, GREGORY P.
MARIAN, ROBERT T.
MARIANOVICH, MARK
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MARIK, JEROME C.
MARINER, RICHARD L.
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MARKHAM, PATRICK W.
MARKS, GUS
MARKULIS, ANDREW V.
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MAROSE, WILLIAM S.
MAROWALLY, JOHN L.
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MARRELLO, DANIEL J.
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MARRELLO, WENDY S.
MARRON, LOUIS
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MARTIN, DONALD E.
MARTIN, FRANK B.
MARTIN, JOHN K.
MARTIN, JULIE A.
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MARTIN, MATTHEW
MARTIN, PATRICK J.
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MARTIN, JR., KIRVEN
MARTIN, EDWARD
MARTIN, THOMAS R.
MARTIN, IV, JAMES K.
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MARTINEZ, ANGEL L.
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MARTINEZ, GEORGE A.

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MARTINEZ, JOSE A.
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MARTINEZ, SALVADOR A.
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MARTINEZ, THOMAS
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MARTINEZ-BUEGEL, RACHEL
MARTINI, NANCY
MARTINKUS, STANELY E.
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MASTERSON, JERRY P.
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MATHEY, JAMES J.
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MATTHEWS, GLADE J.
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MATTHEWS, RONALD
MATTHEWS, ERROL A.
MATTHEWS, HERBERT C.
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MATUCH, THOMAS J.
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MAZZUCA, ANTHONY J.
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MC AULIFFE, EDWARD
MC BRIDE, MICHAEL J.
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MC CAFFERY, JR., ALBERT
MC CALLISTER, ROBERT
MC CANN, ROBERT
MC CANN, THOMAS P.
MC CARTHY, JOHN
MC CARTHY, JOHN P.
MC CARTHY, JOHN S.
MC CARTHY, MARGUERITE M.
MC CARTHY, PAT
MC CARTHY, THOMAS A.
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MC CLAIN, JOHN
MC CLAIN, ROBERT E.
MC CLELLAN, RICHARD A.
MC CLENDON, FRANCIS W.
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MC CLOUD, DELWIN L.

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MC COLLOM, JAMES T.
MC COMB, MICHAEL R.
MC CORKLE, CHARLES A.
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MC CRAY, THOMAS L.
MC CREA, JR., JAMES
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MC CULLY, WALTER J.
MC CURRY, ANNA M.
MC CURRY, LE VONN E.
MC CUTCHEON, ROBERT R.
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MC DANIELS, JOHNNY
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MC DERMOTT, WILLIAM
MC DONALD, DANIEL J.
MC DONALD, ROBERT L.
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MC DONALD, KEVIN T.
MC DONALD, SUSAN M.
MC DONNELL, JAMES P.
MC DONNELL, MARTIN M.
MC DONOUGH, JAMES V.
MC DONOUGH, LORRAINE
MC DONOUGH, THOMAS P.
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MC EWEN, JR., EDWARD R.
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MC GARRY, DENNIS W.
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MC GOVERN, THOMAS B.
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MC GRATH, THOMAS R.
MC GREAL, THOMAS F.
MC GREEVY, DANIEL T.
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MC GRUDER, JOHN
MC GUIRE, DANNY L.
MC GUIRE, JAMES E.
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MC GUIRE, ROBERT A.
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MC GUIRE, JR., EUGENE H.
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MC HUGH, GREGORY R.
MC HUGH, JOHN P.
MC HUGH, THOMAS A.
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MC INERNEY, DANIEL R.
MC INERNEY, WILLIAM T.
MC INTYRE, ROBERT M.
MC KEAG, STEVE
MC KEE, JAMES L.
MC KEEVER, MAUREEN
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MC KENNA, THOMAS F.
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MC KEON, JR., JAMES P.
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MC KNIGHT, JAMES
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MC LEAN, EARL L.
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MC MILLAN, HOWARD H.
MC MULLIN, KELLY J.
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MELVAN, AMBROSE R.
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MEYERS, DARLETTA R.
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MIAL, PAUL D.
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MICELI, RICHARD L.
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MILLER, WILLIAM C.
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MINTON, THOMAS V.
MIRANDA, VERONICA
MIRUS, JOSEPH V.
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MISIURA, KENNETH
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MITCHELL, BARBARA A.
MITCHELL, DONALD J.
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MITCHELL, RICHARD F.
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MITIDIERO, JAMES H.
MITROS, GREGORY A.
MITZELFELD, MICHAEL C.
MLADIC, ROBERT M.
MOCKUS, VYTAUTAS H.
MODESTO, JAMES
MOELLER, RICHARD A.
MOISAN, LOUIS A.
MOKSTAD, WILLIAM A.
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MONDANE, MICHAEL
MONEGAIN, LAWRENCE L.
MONTANA, VITO A.
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MONTEDORE, RONALD P.
MONTES, JR., ALPHONSO
MONTIVIDAS, PETER L.
MOONEY, PATRICIA A.
MOORE, ARCHIE L.
MOORE, CLARENCE E.
MOORE, CLAUDIA E.

MOORE, DONALD A.
MOORE, JOANNE
MOORE, MICHAEL D.
MOORE, MITCHELL
MOORE, RONALD C.
MOORE, THOMAS J.
MOORE, THOMAS P.
MOORE, TRACY R.
MOORE, JEFFERY L.
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MORADO, JUAN
MORALES, JAMES R.
MORALES, TOM E.
MORALES, VINCENT G.
MORAN, ELLEN E.
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MORAN, JR., BARRETT J.
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MORENO, PAUL R.
MORETH, JEAN F.
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MORLEY, WILLIAM J.
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MORRIS, MARTIN T.
MORRISSETTE, GREGORY
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MORROW, DON A.
MORROW, MARK A.
MORTON, ARTHUR C.
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MOSS, DENNIS E.
MOSS, DIANE G.
MOSS, SUSAN E.
MOSS, WILLIAM P.
MOSTACCHIO, SANTO V.
MOTYKIEWICZ, RONALD A.
MOTZNY, THOMAS J.
MOUNTFORD, FRANK W.
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MROCZKOWSKI, CAROL A.
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MUIR, SCOTT P.
MULDOON, DANIEL E.
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MULLINS, STANLEY M.
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MULLINS, JR., EUGENE M.
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MUNIN, ARTHUR C.
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MUNN, KAREN
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MUNYON, THOMAS D.
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MURDOCK, KATHLEEN
MURDOCK, TOMMY P.
MURKOWSKI, STANLEY A.
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MURPHY, DENNIS P.
MURPHY, EDWARD J.
MURPHY, GERALD P.
MURPHY, JOHN
MURPHY, KEVIN P.
MURPHY, RICHARD A.
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MURRAY, JEREMIAH D.
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MUSIAL, FRANK
MUSIAL, ROBERT
MUSIAL, CHARITY T.
MUSOLF, JOHN
MUSSO, SEBASTIAN
MUSZYNSKI, WALTER T.
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NAGODE, ALFRED M.
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NASS, WILLIAM A.
NAUDEN, PAUL W.
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NAUGHTON, STEPHEN F.
NAUGHTON, THOMAS
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NAVARRETE, RAQUEL H.
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NEARY, PETER
NEE, JOHN
NEJA, WILLIAM B.
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NELSON, PHILLIP J.
NELSON, ROBERT C.
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NESSLING, DANIEL
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NEWTON, WILLIE J.
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NICHOLS, OTIS H.
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NOWICKI, JAMES
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O'DONOHUE, DANIEL A.
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O'HARA, PATRICK L.
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O'MALLEY, JUDITH J.
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O'NEIL, DONALD J.
O'NEIL, WILLIAM F.
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O'QUINN, AUBREY
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OAKES, GLORIA J.
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OHSE, RORY J.
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OLINGER, GERALDINE R.
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OLSON, JACK D.
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OLSON, JOHN C.
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ORR, CHARLES
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ORSENO, JR., VITO M.
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ORTIZ, BRADUL A.
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ORTIZ, HECTOR E.
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ORTIZ, RICARDO
ORTIZ, YOLANDA
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OSBORN, ALAN
OSTAFIN, GERALD
OSTAFIN, KENNETH S.
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OTT, ROY J.
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OWCARZ, RICHARD G.
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PACELLI, ANTHONY
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PACHECO, ISRAEL
PACHOLSKI, DAVID
PACK, THOMAS H.
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PAGAN, MICHAEL A.
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PALMER, OTTO W.
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PAMON, BISHOP W.
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PANICK, MARY J.
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PAPPONE, JOHN A.
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PARANELL, ROCKELLE C.
PARDELL, KENNETH R.
PARELLO, DENNIS J.

PARHAM, THOMAS D.
PARICH, GEORGE J.
PARISE, WAYNE
PARISI, AMIE A.
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PARKER, CAROL A.
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PARKER, MICHAEL J.
PARKER, THEODORE R.
PARKER, WILLIS L.
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PARNOW, MITCHELL
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PARROTT, FRANK L.
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PARTIPILO, MICHAEL J.
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PASCUA, DEBORAH
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PASSANANTE, JOHN J.
PASSERI, ROBERT V.
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PATTON, MICHAEL A.
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PAULIN, PAUL J.
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PAULUS, RICHARD J.
PAVLIK, WILLIAM V.
PAVON, JR., RICARDO M.
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PAWLOWSKI, JR., CHARLES M.
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PAYNE, GERALD
PAYTON, JR., THOMAS R.
PAZAN, PAUL
PEAL, JR., ELLIS L.
PEARSON, CHARLES
PEARSON, DAVID
PECA, DENNIS J.
PECAK, JOSEPH J.
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PECK, JAMES R.
PEDERSEN, WILLIAM L.
PEEBLES, THOMAS
PEKARA, TERENCE P.
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PELLEGRINI, RAYMOND J.
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PENA, TAMMIE A.
PENA ALVAREZ, SHERRY L.
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PERNITSKY, ROBERT S.
PERON, ROBERT J.
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PERRY, KENNETH L.
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PETERSON, ROBERT B.
PETERSON, ROBERT T.
PETERSON, THOMAS G.
PETERSON, WILLIAM A.
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PETRAUSKAS, JAMES
PETRENKO, VIC
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PETRUZZI, JOSEPH
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PEYRONET, ERNEST W.
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PIERZCHALSKI, HENRY
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PIETRYLA, MICHAEL J.
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PIETRZAK, RICHARD A.
PIKE, GARY R.
PIKE, LAWRENCE
PIKOR, GISELLE
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PILGRIM, CLIFFORD J.
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PIPOLO, JOSEPH
PIROLLI, ALFRED E.
PISTELLO, BERNARD
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PITULA, RICHARD J.
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POLICKY, RICHARD
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RAMIREZ, ARNULFO
RAMIREZ, RAYMOND
RAMIREZ, JOSE G.
RAMOCKI, ANTHONY J.
RAMON, PETE A.
RAMOS, RAPHAEL
RAMOS, THOMAS R.
RANDOLPH, EDGAR
RANNOCHIO, SAMUEL R.
RAPA, BRUCE
RAPACZ, SILVIA M.
RASCHILLO, DENNIS A.
RASPBERRY, JAMES P.
RASPOPOVICH, GEORGE
RATCLIFF, CHARLES
RAVE, EDWARD F.
RAWLS, TANYIA
RAY, MICHAEL T.
RAY, WINFRED
READUS, BERRYON
REARDON, ELEANOR M.
REBICH, RENEE A.
RECHTIEN, FRANCIS H.
RECHTIEN, JOSEPH F.
RECORD, EDWARD
REDMAN, CHARLES A.
REDMOND, HERBERT E.
REDMOND, JOHN S.
REDMOND, WILL
REDMOND, WILL D.
REDVICK, JOAN
REDVILLE, JOSEPH A.
REED, BERNARD P.
REEDY, JAMES R.
REESE, ROBERT E.
REGNIER, STEVEN T.
REHLING, DONALD J.
REID, THOMAS J.
REID, LLOYD
REIDY, WILLIAM F.
REIDY, WILLIAM P.
REILLY, THOMAS K.
REINES, EDWARD J.
REITER, LINDA M.
REITER, MARK E.
REMBISZEWSKI, STANLEY F.
REMNES, RICHARD
RENAULT, JANINE M.

RENDON, CATHLEEN
RENDON, JR., ARNOLDO
RENTZ, HOWARD
RESCHKE, HERBERT C.
REUM, DARRELL R.
REWERS, RONALD F.
REWERS, WILLIAM
REYES, ANDRE
REYES, ELBIN
REYES, MARIA G.
REYES, JR., JOHN J.
REYNOLDS, JAMES
REYNOLDS, THOMAS A.
REYNOLDS, VINCENT V.
REYNOLDS, THOMAS P.
RHOADS, DIANE
RHODEN, DAWN E.
RHODEN, RALPH C.
RHODES, CHARLES W.
RHODES, MARGUERITE
RHYNE, JR., TEELY
RIBAUDO, NICK V.
RIBICH, HENRY M.
RICCIO, ANTHONY J.
RICE, JOHN A.
RICE, MICHAEL P.
RICE, RAY
RICHARD, WILLIAM G.
RICHARDS, MARK S.
RICHARDS, WARREN
RICHARDSON, CHARLES
RICHARDSON, CLIFFORD
RICHARDSON, DAN W.
RICHARDSON, DONALD J.
RICHARDSON, EDWARD J.
RICHARDSON, JESSE
RICHARDSON, JOAN M.
RICHARDSON, THOMAS
RICHMOND, EUGENE T.
RICHTER, BERNARD
RICHTER, DAVID
RICKS, JR., RAYNOR J.
RIECK, JUDITH G.
RIEGER, NICHOLAS C.
RIESS, KENNETH A.
RIESS, LINDA J.
RIGA, WILLIAM A.
RIGGENBACH, CARL R.
RIGGIO, LUIGI
RILEY, JAMES V.
RILEY, KATHLEEN
RILEY, MICHAEL R.
RILEY, THERESE
RIMKUS, DAVID S.
RIMKUS, STANLEY
RINALDI, ROGER
RINE, JAMES J.
RINKENBERGER, RICHARD
RIORDAN, BERNARD A.
RIORDAN, EDWARD J.
RIORDAN, JOHN P.
RIOS, ERIC
RITCHIE, MICHAEL J.
RIVERA, EDGARD
RIVERA, JESUS A.
RIVERA, JOAQUIN P.
RIVERA, JOSE
RIVERA, MICHAEL J.
RIVERA, NORBERT,
RIVERA, VICTOR, L
RIZLERIS, ALBIN, J
RIZZO, JOSEPH,
RIZZO, TONY,
RIZZO, DENNIS, S
ROBASZEWSKI, ROMAN, A
ROBERTS, JAMES, J
ROBERTS, RICK,
ROBERTS, CORA, SUE
ROBERTS, JR, GEORGE, R
ROBERTSON, BARBARA, E
ROBERTSON, JOHN, M
ROBERTSON, ROBERT,
ROBERTSON, WAYNE, E
ROBERTSON, WILLIAM,
ROBINSON, ADRIEN, S
ROBINSON, ANTON, G

ROBINSON, EDWARD,
ROBINSON, GERALD,
ROBINSON, HERMAN,
ROBINSON, MARSHALL,
ROBINSON, RANDALL, J
ROBINSON, SANDRA, J
ROBINSON, THERESSA,
ROBINSON, YOLANDA, H
ROBINSON, JR, ROBERT, E
ROBLES, LEOPOLDO, C
ROBLES, RONALD, L
ROBY, GEORGE, C
ROCHON, ALPHONSE,
ROCHON-JOHNSON, DAISY, E
ROCHOWICZ, RICHARD, A
ROCK, MICHAEL, M
ROCK, MICHAEL, G
ROCKYMORE, LIONEL,
RODE, JAMES, M
RODEN, VICTOR, H
RODGERS, MICHAEL, F
RODGERS, RONALD, R
RODRIGUEZ, ABELARDO,
RODRIGUEZ, ANGELO, L
RODRIGUEZ, ANGELO, M
RODRIGUEZ, FRANK, A
RODRIGUEZ, JOSE, C
RODRIGUEZ, JOSE, M
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RODRIGUEZ, PAUL,
RODRIGUEZ, PEDRO,
RODRIGUEZ, RAUL, R
RODRIGUEZ, ROBERT, A
RODRIGUEZ, RUDY,
RODRIGUEZ, SOCORRO,
RODRIGUEZ, THOMAS,
ROGERS, ALAN, F
ROGERS, GERALD,
ROGERS, MAUREEN, C
ROGERS JR., GEORGE,
ROGERS, PETER, J
ROHACIK, CHARLES, J
ROHRLACK, JAMES,
ROKOS, RONALD, W
ROKOSIK, ERNEST, W
ROLAND, AZZIE,
ROLAND, MELVIN,
ROLDAN, CHARLETTE, S
ROLNICKI, RICHARD, J
ROLSTON, LEONARD, T
ROMAN, DAVID, B
ROMANIUK, AL,
ROMANO, JASPER,
ROMANO, RONALD, J
ROMANO, VINCENT,
ROMANOWSKI, ROBERT,
ROMERO, GEORGE, L
ROMIC, JEAN, M
RONEY, TODD, S
ROOKER, III, ROBERT, W
ROONEY, PATRICK, F
ROONEY, WILLIAM, J
ROSA, ANGEL, L
ROSADO, BENNY,
ROSARIO, EDWARD,
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ROSCICH, ANTHONY,
ROSE, DONALD, J
ROSE, KATHERINE,
ROSE, MICHAEL,
ROSE, WILLIAM, H
ROSELLINI, MARK, V
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ROSEN, LOUIS,
ROSENBUSCH, THOMAS, J
ROSENKRANZ, CHARLES, E
ROSER, JAMES, F
ROSINSKI, DENNIS, L
ROSNER, JOSEPH, G
ROSS, DENNIS,
ROSS, JOHN, E
ROSS, KENNETH,
ROSS, MICHAEL, L
ROSS, PRESTON, T
ROSS, ROBERT,
ROSS, VICTORIA, A

ROSS, WILLIAM, E
ROSS, WILLIAM, W
ROSSI, JOHN, J
ROSSI, JR, NICK,
ROSZAK, LUCI,
ROTHGEB, HARLAN, E
ROUBIK, EMIL, W
ROUZAN, DONALD,
ROWAN, JAMES, G
ROWAN, JAMES, J
ROWAN, KAREN,
ROWLAND, CISCO, D
ROWLEY, LARRY, E
ROY JR, HOWARD,
ROYCE, ROBERT, W
ROZELL, DAVID, M
ROZELL, MARY, A
RUBACK, CHARLES, R
RUBIN, HARVEY,
RUBIN, RICHARD,
RUBIN, VINCENT, J
RUBINO, NICHOLAS,
RUCCI, DAVID,
RUDDEN, MICHAEL, J
RUEHLE, CHRISTINE, M
RUER, SHERWIN,
RUGE, CARL,
RUGGERO, RUSSELL,
RUGGIERO, ANTHONY, J
RUHNKE, GEORGE,
RUIZ, IRENE,
RUIZ, ORACIO,
RUIZ III, GILBERT,
RUMOWSKI, LESTER,
RUMSFELD, ALMA,
RUNNELS, PAMELA, S
RUNNELS SR., RICK, R
RUSH, KIRK, H
RUSHING, ALFREDA,
RUSSELL, MICHAEL, F
RUSZKOWSKI, CASIMIR,
RUTHER, PAUL, A
RUTHERFORD, ROBERT, J
RUTKOWSKI, ALLAN, W
RYAN, DONALD, J
RYAN, JOANNE, E
RYAN, JOHN, T
RYAN, JOHN, W
RYAN, KEVIN, P
RYAN, LAWRENCE, G
RYAN, MARTIN,
RYAN, MARTIN, J
RYAN, MICHAEL,
RYAN, PATRICK, M
RYAN, RICHARD,
RYAN, ROBERT, A
RYAN, ROBERT, G
RYAN, RONALD, P
RYAN, RUSSELL, R
RYAN, THOMAS,
RYAN, JAMES, P
RYAN, JOHN, J
RYBICKI, RICHARD, F
RYERSON, LYNN, E
RZODKIEWICZ, THOMAS, A
SABELLA, VINCE,
SACCO, WILLIAM, F
SACKS, JEFFERY, A
SACOLICK, RONALD,
SADOWSKI, KEVIN, W
SADOWSKI, STEPHEN,
SADOWSKI, JAMES, J
SAHNAS, KEN,
SAILER, THOMAS, E
SAK, JAMES, K
SAKURAI, DEAN,
SALABURA, STAN,
SALADINO, CARLOS, M
SALCEDO, RUBEN,
SALCEDO, MARIA,
SALEMME, JOHN,
SALLEE, JAMES, L
SALTER, RONALD, B
SALUSTRO, LINDA, F
SALUSTRO, SHARON, E
SALVATORE, CHARLES, W

SALVATORE, PATRICIA, M
SALVI, GREGORY,
SALVI, KAREN, M
SALVO, JOSEPH, P
SALYERS, JOHN, C
SAMANAS, RICHARD, R
SAMANAS, VERONICA,
SAMMARCO, MARC, A
SAMPEY, CAROL, J
SAMPEY JR, ROBERT, E
SANCHEZ, JAMES, R
SANCHEZ, NOEL,
SANCHEZ, RICHARD,
SANDERS, EARL, P
SANDERS, JIMMY, L
SANDERS, JOSEPH, M
SANDERS, STANLEY,
SANDLUND, DAVID, N
SANDOVAL, JUAN, R
SANDOVAL, LORENZO, J
SANFILIPPO, ANTHONY,
SANTANA, MANUEL,
SANTANGELO, ERNEST, P
SANTIAGO, ALVIN,
SANTORO, CAROL,
SANTORO, JOSEPH, J
SARGAUTIS, ROBERT, J
SARGUS, ROBERT, L
SARLITTO, MARY, E
SARNOWSKI, ROBERT, W
SARPALIUS, PAUL, J
SASSO, KATHRYN,
SATRIANO, LOUISE, M
SAULINSKI, RICHARD, R
SAVAGE, JOHN, W
SAVAGE, JR, RAYMOND, J
SCALA, GERALD, J
SCALES, GEORGE, W
SCALETTA, MIKE,
SCALISE, JOHN, R
SCALLON, JAMES, F
SCANLAN, KATHLEEN, E
SCANLAN, PATRICK, W
SCANNELL, CAROL ANN,
SCAPARDINE, ANTHONY, W
SCARAMELLA, GENE, L
SCARPETTI, ROBERT, C
SCATCHELL, JOHN, M
SCHAEDEL, THOMAS, K
SCHAFFER, JOHN,
SCHAK, RICHARD, A
SCHATZEL, LAWRENCE, J
SCHATZEL, ROBERT, M
SCHAUF, RALPH, G
SCHEITHAUER, MARK,
SCHELL, GEORGE, F
SCHERGEN, RITA, E
SCHERR, ETHEL, C
SCHILF, ALBERT, J
SCHILLACI, RAYMOND,
SCHILLEN, JOHN, E
SCHIPPLICK, THOMAS, D
SCHIPPMAN, ROBERT, D
SCHIRO, JOSEPH, N
SCHLEDER, EUGENE,
SCHLENBECKER, PHILLIP, J
SCHLOSS, ALLISON, J
SCHMIDT, EDWARD, J
SCHMIDT, JAMES,
SCHMIDT, RICHARD, J
SCHMIT, JOSEPH, A
SCHMIT, NICHOLAS, J
SCHMITT, KARL, E
SCHMITZ, NICHOLAS, P
SCHMITZ JR, MICHAEL, J
SCHMITZ, JOHN, L
SCHNABEL, FRED,
SCHNEIDER, GARY,
SCHNEIDER, RICHARD, D
SCHNOOR, ROY, E
SCHOBER, JOSEPH, W
SCHOBER, WILLIAM,
SCHODTLER, JAMES, E
SCHORSCH, STEVEN, R
SCHOTT, RICHARD,
SCHREINER, ANGELA, M

SCHREINER, JAMES, L
SCHREY, EDWARD, M
SCHROEDER, CLARK,
SCHUCK, MARTIN,
SCHULD, JOHN, M
SCHULER, NICHOLAS, J
SCHULTZ, ALFRED,
SCHULTZ, IRVING, L
SCHULTZ, MARSHALL,
SCHULTZ, RONALD, J
SCHULTZ, THOMAS, E
SCHULZ, DONALD, E
SCHULZ, FREDRICK, W
SCHULZ, JOHN, A
SCHUMACHER, MICHAEL, P
SCHUMACHER, ROBERT,
SCHUMACHER, RONALD, J
SCHUMANN, CYNTHIA, A
SCHUMERTH, ROBERT, A
SCHURY, JOSEPH, K
SCHWAB, JOHN,
SCHWARTZ, JAMES,
SCHWARTZ, MARY,
SCHWIEGER, DAVID, W
SCHWIEGER, SCOTT, M
SCHWIEGER, STEVEN,
SCHWIEGER, STEVEN, W
SCIMECA, VICTOR, B
SCORNAVACCO, MICHAEL, J
SCOTT, FREDERICK, F
SCOTT, HESTER, L
SCOTT, JAMES, W
SCOTT, JANICE, I
SCOTT, RICHARD, D
SCOTT, THOMAS, G
SCOTT, THOMAS, J
SCRAMUZZO, CRAIG,
SEAGREN, SARA, A
SEALS, LEONARD, W
SEALUND, RALPH, K
SEBASTIAN, ROY, D
SEBECK, JOHN, C
SEBRING, JOSEPH, M
SECCLONIA, TERRY,
SEGOVIA, RODOLPHO,
SEGROVES, LONNIE,
SELKE, WILLIAM, J
SEMPLE, DENNIS, D
SEPANIK, DOROTHY,
SEPULVEDA, DAVID, W
SERAFINI, JOHN, F
SERGEL, BONNIE,
SERPE, CHARLES, A
SESSO, JAMES, A
SEUFERT, PETER, N
SEVENING, MARYANN,
SEVERINO, MARK, A
SEVOICH, ROBERT,
SEXTON, JOHN, D
SEXTON, PATRICK, F
SEYFERLICH, WARREN, H
SEYFERT, EUGENE, H
SEYTON, JR, HANSEL, R
SHADER, JAMES, M
SHADWICK, ROGER, W
SHAEFFER, JAMES,
SHANAHAN, PATRICK, J
SHANAHAN, ROBERT, E
SHANAHAN, ROBERT, W
SHANAS, MARYANN,
SHANAS, RICHARD, H
SHANNON, THOMAS, M
SHANNON, WILLIS, W
SHAUGHNESSY, EDWARD, P
SHAUGHNESSY, JOHN, M
SHAVER, SCOTT,
SHAW, DARRELL, W
SHAW, DENNIS, R
SHAW, JR, JOHN, W
SHAW-KIRKSEY, LISA, R
SHEA, THOMAS, M
SHEAD, BRENDA, J
SHEAR, KATHLEEN, F
SHEEHAN, JOHN, J
SHEEHAN, THOMAS, J
SHEERAN, SUSAN, L

SHEILS, ANN, M
SHELESNY, STEPHEN, G
SHENBERGER, EDWARD,
SHEPARD, DON, E
SHEPHERD, EUGENE, N
SHEPPARD, KATHLEEN, M
SHEREIKIS, LEONARD, E
SHERIDAN, PHILIP, E
SHERMAN, RICHARD,
SHERWELL, PHILLIP, L
SHERWIN, JACK, R
SHERWIN, ROBERT, K
SHIELDS, TERRENCE, M
SHIER, STANLEY, L
SHIMKUS, JUDITH, A
SHINE, JOSEPH,
SHINE, JR., WILLIAM, B.
SHINN, BARBARA,
SHIPLEY, EDWARD, L
SHOPIN, JOHN, A
SHORE, RICHARD, J
SHORT, BRIAN,
SHORTER, III, BOYSIE, R
SHOTWELL, ROBERT,
SHOUP, DEBORAH, A
SHULL, MICHAEL, A
SHULTZ, LATON,
SHUMAN, BERNARD,
SHUMPERT, EVERETT, D
SHURTLEFF, GLEN,
SIBLEY, DENISE, D
SICHELLE, BONNIE, G
SICILIANO, MICHAEL, V
SIDES, LONNIE, W
SIEFERT, CHARLES,
SIEGEL, JEROME,
SIERZEGA, PATRICK,
SIGNORETTI, DONALD, R
SIGNORETTI, JOSEPH, R
SIHOCKY, JAMES, A
SIKORSKI, RALPH, S
SILEKIS, EDWARD,
SILIS, MARK, R
SILK, WILLIAM, H
SILVA, FRANK, G
SILVAS, ROGER,
SIM, JAMES, A
SIMANDL, ROBERT, J
SIMANEK, EDWARD, L
SIMEK, JAMES, F
SIMI, MICHAEL, P
SIMICH, NICHOLAS, F
SIMKUS, SHARON,
SIMMONS, RAY, E
SIMMONS, WILLIE, J
SIMMONS, TRACY, L
SIMON, EDWARD,
SIMON, JOHN, F
SIMON, NICHOLAS, P
SIMPSON, ROBERT, R
SIMPSON, THOMAS, M
SIMPSON JR, EUGENE, M
SINENI, JAMES,
SINK, JAMES,
SINK, WILLIAM, L
SISLER, CHARLES, M
SIUDUT, WALTER,
SIVICEK, DANIEL, J
SIVICEK, DAVID, A
SIWAK, MARY CATHERINE,
SIWEK, RAYMOND,
SIWEK, EMILY,
SKIBA, ALEXANDER, E
SKIBINSKI, ANNE, M
SKIPPER, JOHN,
SKIPPER, MAUREEN, L
SKIPPER, NEIL,
SKOL, PATRICIA, K
SKOL, THOMAS, J
SKOPIS, GEORGE,
SKOREK, FRANK, W
SKORODYNSKI, MICHAEL, A
SKULARK, LADESTA, R
SKWARSKI, ROBERT, W
SKYLAS, LOUIS, J
SKYLES, PATRICIA, L

SLANKARD, MARK, E
SLEICHERT, JAMES, P
SLOAN, RICHARD,
SLOMA, RAYMOND, T
SLOWIK, JOSEPH, M
SLUPSKI, ROBERT,
SMALL, GERALD, M
SMALL, MARILYN, E
SMIGLA, LAWRENCE,
SMILEY, RICHARD, L
SMITH, AUNZETTE, F
SMITH, BERTRAND,
SMITH, BILL, D
SMITH, CHARLES, E
SMITH, CHARLES, M
SMITH, DEBORAH, K
SMITH, DIANA, L
SMITH, DONALD, H
SMITH, DWAIN, D
SMITH, FRANKLIN, D
SMITH, FREDRICK, C
SMITH, GARY, R
SMITH, JAMES, A
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SMITH, JIMMIE, L
SMITH, JOSEPH, E
SMITH, KENNETH,
SMITH, KENNETH, H
SMITH, KENNETH, M
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SMITH, LAWRENCE, H
SMITH, LILLARD,
SMITH, MICHAEL,
SMITH, MILTON, H
SMITH, REGINA, M
SMITH, ROBERT, E
SMITH, ROY, V
SMITH, WAYNE, J
SMITH, WILLIAM, M
SMITH, WILLIE, J
SMITH, JOHN, S
SMITH, JOYCE, F
SMITH, LESTER,
SMITKA, ROBERT, J
SMULEVITZ, LESLIE, A
SNETHEN, DAVID, E
SOBIESZCZYK, ROBERT,
SOBOLEWSKI, ANDREW, G
SOBON, MICHAEL, K
SODERGREN, STEPHEN, R
SODINI, RONALD PATRICK,
SOFRENOVIC, MILORAD, M
SOIL, VAN, T
SOJKA, EDWARD, M
SOLAVA, JAMES, J
SOLECKI, JOHN, F
SOLIS, ANDREW,
SOLTYS, RAYMOND, T
SORAGHAN, WILLIAM, F
SORCI, SALVATORE, P
SOREGHEN, ROBERT, W
SORENSON, JAMES, H
SOSNOWSKI, JOSEPH, R
SOSTAND, WILLIAM, C
SOTAK, WILLIAM, P
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SOTO, LOUIS,
SOTO, ROBERT,
SOUTH, SEAN, M
SOUTHERLAND,
THEODORE, B
SOWINSKI, ROGER,
SPADONI, ROBERT, E
SPAGNOLA, PAUL, M
SPAGNOLO, KENNETH, R
SPAIN, VALETA,
SPALLA, JOHN, J
SPARACINO, RUSSELL, D
SPARANO, FREDERICK, K
SPARKS, JOSEPH, J
SPARROW, TED, L
SPATAFORA JR, ANTHONY, V
SPATARO, GEORGE, L
SPECHT, ROBERT, J
SPECHT, SANDRA, J

SPECK, PETER, F
SPEDALE, MARK, D
SPEIDEN, JAMES, J
SPENCE, TOMMY, L
SPENCER, CORNELIUS,
SPENCER, EDDIE,
SPENCER, JAMES, M
SPENCER, RONALD,
SPENCER, WADE, L
SPERANDO, JOSEPH,
SPEREKAS, GEORGE, J
SPICUZZA, ANNETTE, M
SPINK, KENNETH, L
SPIROPOULOS, MICHAEL,
SPRAGGINS, RONALD,
SPREYNE, ROBERT, M
SPRINGER, CHARLES, E
SRBENY, JAMES,
SROKA, RONALD, S
ST. PIERRE, LILY, M
ST.CLAIR JR, BEREA, P
STACH, RICHARD, J
STACHON, JOSEPH, J
STACHULA, JOSEPH,
STACHULA, THOMAS, J
STACHULA, WILLIAM, J
STACK, DAN, F
STACK, JOHN, J
STACKER, DEREK, V
STADNICKI, CASIMIR, R
STADNIK, RICHARD, J
STAFEN, KRISTINA,
STAMATAKOS, EUGENE, A
STAMPNICK, ARLENE, J
STANFIELD, DARRELL, L
STANIEC, CHRISTINE,
STANIEC, HENRY, P
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STANKOWICZ, RONALD,
STANKUS, DENNIS,
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STANLEY, DONALD, L
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STANSKI, EDWARD, B
STANTON, THOMAS, M
STAPLES, ARLEY, E
STARCEVICH, STEVEN,
STARR, LEROY, G
STASZAK, NORBERT, E
STATHER, MICHAEL,
STAUDOHAR, JAY, J
STEELE, JOHN, R
STEELE, ROGER,
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STEELE, TERRY,
STEFAN, BRUCE, J
STEHLIK, JOSEPH, A
STEIN, RICHARD, J
STEIN, JAMES, L
STEINMEIER, ARTHUR,
STELLA, CHARLES,
STELLA, MARY, L
STELLA, JOHN, P
STEPHENS, ALAN, G
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STEPKOWICZ, MIKE,
STEPNEY, MICHAEL, L
STEPPAN, DONALD, N
STERLING, DANIEL, T
STEVENS, WILLIAM, M
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STEVENSON, GREGORY, L
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STEWART, BERYL, S
STEWART, JACK,
STEWART, PATRICE, B
STEWART, STEVEN, J
STEWART JR, HESSIE,
STEWART JR., NELSON, L
STICH, MARTIN, J
STIEBEN, RONALD,
STILLE, WILLIAM, C

STINITES, ALEXANDER, F
STINSON, HOMER,
STOCKER, LEONARD, F
STOFFREGEN, ALANE, M
STOJENTIN, HAROLD, N
STOKES, JAMES,
STONE, DEAN, A
STONE, FREDRICK, J
STONE, LEONARD,
STOPPA, RAYMOND,
STORINO, EUGENE,
STORTO, DOMINIC,
STORY, STEVE,
STOVALL, EDWARD, A
STRAHLMAN, ROBERT,
STRANDBERG, EDWARD, H
STRANSKI, THOMAS,
STRATTON, STEPHEN, A
STRAZZANTE, RUSSELL, P
STREETS, BAXTER, G
STREFF JR, WILLARD,
STRESKE, MARVIN, S
STROM, RONALD,
STROM, THOMAS, C
STRONG, ANTIONETTA,
STRONG, TERRY, L
STROTHER, RAMSEY, J
STROUSE, DIANNE,
STRUGALA, RICHARD, J
STRUKE, WILLIAM, J
STRZALKA, ROBERT,
STRZECHOWSKI, LAWRENCE,
STRZEPEK, STEPHEN, J
STRZEPKA, STANLEY,
STUART, STEPHANIE,
STUBBS, CALVIN,
STUBE, PATRICIA, ANN
STUBITSCH, ROBERT, A
STUDENROTH, KENNETH, B
STUMP, WILLIAM,
STURM, CHARLES, V
SUAREZ, MANUEL, D
SUCHARSKI, KENNETH, S
SUDDIE, JOHN,
SUERTH, DAVID, J
SULLIVAN, DANIEL, J
SULLIVAN, JAMES,
SULLIVAN, JOHN, P
SULLIVAN, JOSEPH, M
SULLIVAN, PATRICK, F
SULLIVAN, ROBERT, L
SULLIVAN, ROSEMARY, C
SULLIVAN, WILLIAM, B
SULLIVAN, JR, THEODORE, P
SUMMERVILLE, JOHN,
SUMMERVILLE, MARTIN,
SUN-DEMUS, SHANI, K
SUNDAY, ROBIN,
SUNDBERG, JAMES,
SUNDBERG, STEPHEN, C
SURDEJ, STAN,
SUSNIS, ALBERT, B
SUVADA, STEVEN, E
SVETKOVICH, GEORGE, S
SVIHULA, WALTER,
SWAIN, COSTELL, S
SWAINE, DANIEL, P
SWAN, THOMAS, J
SWANIGAN, ISIAH,
SWEENEY, DON, L
SWEENEY, JAMES RICHARD,
SWEENEY, JOHN, J
SWEENEY, MICHAEL, L
SWIATEK, JAMES, R
SWIATKOWSKI, DANIEL,
SWICK, DANIEL, E
SWICK, RONALD,
SWIDERSKI, EDWARD, J
SWIDERSKI, ROBERT, A
SWINKLE, GERALD, J
SWISTOWICZ, MICHAEL, D
SWITSKI, VICTOR, T
SWOOPE, THOMAS, E
SYDOR, PATRICK,
SYKES, RAYMOND, J

SYKES SR, LEONARD, L
SYPULA, JOHN, J
SZCZESNY, DONALD, R
SZECH, RONALD, N
SZELAG, DIANNE,
SZEWCZYK, THEODORE, Z
SZMYD, JOHN, B
SZPARKOWSKI, GARY, W
SZPICKI, PHILIP, H
SZUBA, EDVIN, L
SZYMANSKI, GERALD, J
SZYMANSKI, THOMAS, J
SZYSZKA, ROGER, R
TAGLIERE, JAMES, R
TAGLIOLI, THOMAS, A
TAKAKI, ROSS, K
TALKOWSKI, MARIE, C
TALLEN, STUART, J
TANDARIC, JOSEPH, J
TANSEY, EDWARD, J
TANSEY, THOMAS, F
TANTER, JR, JOHN, D
TANTILLA, MICHAEL, A
TAPIA, ROBERT, S
TAPKOWSKI, ROMAN, S
TARALA, CHESTER,
TARARA, JAMES,
TARR, HAROLD, M
TASSONE, ARTHUR, J
TATE, TYRONE,
TATE-THORNE, BETTIE, T
TATHAM, ROBERT, L
TAUBER, TERRY, A
TAYLOR, ABRAHAM, R
TAYLOR, ADOLPH,
TAYLOR, JOANN,
TAYLOR, KENNETH,
TAYLOR, KEVIN, G
TAYLOR, ROGER,
TAYLOR, THOMAS, E
TAYLOR JR, LYTTON, M
TAYLOR, NORMAN, G
TAYLOR, VICTOR, W
TEDESCO, JOHN, R
TEIL, SAMMIE, W
TEMPLE, RONALD, M
TENCZA, JAMES, J
TENUTA, SALVATORE, F
TERRELL, JAMES, P
TERRETTA SR, JOHN, V
TERRY, DONALD, R
TERRY, LAWRENCE, E
TERRY, STERLING, F
TERUSAKI, ROBIN, Y
TEUFEL JR, MARTIN,
THAXTON, DEBRA,
THEDFORD, TERRANCE, A
THEIL, ARTHUR, H
THEZAN, LAWRENCE, W
THIBAULT, JOHN,
THIEL, ALAN, R
THOMAS, CLEVELAND,
THOMAS, EDWIN, A
THOMAS, HENRY, P
THOMAS, JAMES, M
THOMAS, LAWRENCE, W
THOMAS, ROBERT, L
THOMAS, WILLIAM,
THOME, ALFRED,
THOMPSON, CAROL,
THOMPSON, LOUIS,
THOMPSON, MARK, C
THOMPSON, RALPH,
THOREN, LISA, M
THOREN, RICHARD, F
THORNTON, MAURICE, D
THORNTON, PAUL, G
THREET, MICHAEL, A
THUN, EDWARD, H
TIANO, THOMAS, C
TIDWELL, SHERMAN, G
TIEDJE, EDWARD, C
TILFORD III, FRED, J
TIMMEL, JAMES, A
TINERELLA, MICHAEL, A
TINERELLA, VINCENT, P

TINNER, WALTER, W
TITO JR., ANTHONY, R
TOBIAS, MATTHEW, E
TOBIN, JAMES, A
TOBIN, WILLIAM,
TOBUCH, LAWRENCE, J
TOCK, WILLIAM, F
TODARO, JOSEPH, N
TODD, EDWARD, M
TODD, ELLA, A
TODE, PATRICK,
TOENINGS, JOHN, E
TOLLEY, JOHN, F
TOLOMEO, JOHN,
TOMA, MICHAEL, J
TOMACELLI, SERGE,
TOMASEK, FREDRICK,
TOMASIK, EDWARD, C
TOMASOVICH, MICHAEL, J
TOMASZEWKSI, LOIS, C
TOMASZEWSKI, NORMAN, F
TOMSON, THOMAS, E
TONDRYK, VINCENT, J
TONOZZI, DOMINIC, J
TOOLES, DENNIS, L
TOOLIS, JAMELE, F
TOOLIS, THOMAS, J
TOPCZEWSKI, RONALD, C
TOPEL, RICHARD, J
TOPOLSKI, JAMES,
TOPP, WILLIAM, F
TORRES, IGNACIO,
TORRES, JOSE, J
TORRES, ROSE, M
TORRES, ROY, F
TORTORELLO, ANTHONY,
TORTORIELLO, WILLIAM,
TOTCOFF, STEVEN, J
TOTOSZ, LEONA, L
TOUHY, RICHARD, G
TOVAR, ROBERT,
TOWN, KAREN, E
TOWNSEND, DONALD, L
TOWNSEND, PHYLLIS, A
TOWNSEND, JR, JOSEPH, I
TRACEY, ROBERT, J
TRACY, GEORGE, V
TRACY, MICHAEL, J
TRACY JR, RAYMOND, J
TRAFICANTI, THOMAS, C
TRAHANAS, JOHN,
TRANCHITA, ANDREW,
TRANCHITA, BARDO, A
TRAPP, WAYNE, C
TRAYNOR, FRANK,
TREMBLE, CURTIS, J
TREMPE, KENNETH,
TREMPE, SUSAN, C
TREPAC, RONALD, S
TREZISE, RAYMOND,
TRIBBLE, CHARLES, H
TRIBE, EDWARD, C
TRIBE, JOHN, M
TRIFILIO, LOUIS,
TRIFONE, JOSEPH, A
TRIMBLE, BYRON,
TRINER, PAMELA, E
TRIPLETT, FRANK,
TRIPLETT, LARRY, G
TRISTANO, NICHOLAS, E
TROCCHIO, PHILIP,
TROCHE, RANDY, D
TROIKE, ROBERT, J
TROOGSTAD, CURTIS, D
TROUP, DONNA,
TRUMBO, ROBERT, T
TUCK, WILLIAM,
TUCKER, JAMES, A
TUDRON, JAMES, W
TUIDER, LAWRENCE, H
TUNNO, JOSEPH, F
TURANO, RACHELLE, J
TURES, EDWARD, R
TURICH, DONALD, P
TURNER, ERNEST, F
TURNER, GLENN,

TURNER, SR, RALPH, I
TURNEY, JOHN, M
TURNEY JR, JAMES, R
TWIGGS, VICTORIA, R
TYLER, DALLAS, R
TYLER, LAZANE, B
TYSE, MICHELLE,
UGOREK, RANDALL, J
ULCIGRAI, ELVIO,
ULLRICH, JOHN, P
ULLRICH, WHALEN, T
ULRICH, MARY, J
UNDERWOOD, CLIFTON,
UNDERWOOD, MICHAEL, W
UPPLING, BYRON, R
URBANIAK, ANTHONY,
URBIKAS, ELDON, E
URBON, SUSAN, M
URGO, CHARLES, M
URSITTI, ERNEST,
URSITTI, RICHARD,
USELTON, DONALD, R
UTTER, ROBERT, W
UTTERBACK, EDWARD,
UTZ, JAMES, J
VACCARO, BRUCE, M
VALENCIA, ROBERT,
VALENTIN, JOE,
VALENTINE, DENNIS,
VALKANET, EDWARD,
VALKENBURG, WILLIAM, L
VALLEJO, CHARLES,
VALLES, IRMA, R
VALLES, JESSE, S
VALLEYFIELD, BOB,
VAN HOVE, THOMAS, E
VAN TINE, KURT, A
VANDENBUSSCHE, ROBERT, J
VANDERSCHOOT, GEORGE,
VANEK, EDWARD, D
VANEK, JOHN, E
VANN, JR, EUGENE, G
VANSEGHI, THERESA, D
VARA, MARIO, A
VARALLO, DONALD, E
VASTINE, GREGORY, M
VASTINE, SUZY, M
VAVRIN, DENNIS, W
VAZQUEZ, GERMAN, J
VEGA, LUIS,
VEGA, RAPHAEL,
VEGAS, JOSEPH, R
VEGUILLA, ROBERT,
VELEZ, HERMES,
VELEZ, LEO,
VELGARA, JULIO,
VELLEGAS, JAMES,
VENEIGH, DENNIS, F
VERA, CHARLES, A
VERBER, JOHN, D
VERDICO, ROCCO, D
VERGARA, HECTOR, L
VERGIL, RAFAEL, V
VERNAGALLO, LOUIS,
VERSETTO, LAUREN, R
VERSETTO, NICHOLAS, J
VESOTA, JR, VITO,
VETH, EDWARD, F
VETRANO, VICKI,
VETRANO, PETER, J
VETROVEC, DONALD, R
VICARI, RAYMOND, F
VICK, JOHN, R
VICK, WILLIAM, C
VILLALOBOS, DAVID, A
VILLANUEVA, GUILLERMO,
VILLARDITA, ANTHONY, A
VILLARREAL, STEPHEN, A
VIRGILIO, CARLO, A
VITAIOLI, PAUL, D
VITELLO, JOSEPH, P
VITULSKI, DEAN,
VIVIRITO, PATRICK, A
VLAHOVICH, FRED, A
VOGT, VINCENT, J

VOIGHT, WILLIAM, M
VOLBERDING SR., LORIN, E
VOLKMAN, JAMES, R
VOLPENTESTA, JOSEPH,
VOLPI, JAMES, R
VONDRAK, RITA,
VOSIS, DARLENE,
VOULGARIS, ELIAS,
VRDOLYAK, JOHN, J
VUCKO, RALPH, E
VUJIC, MILAN,
VUKAS, VINCENT,
VUKONICH, FRANK, G
WADE JR, THOMAS, C
WAFER, LOVALE,
WAGNER, BRUCE, E
WAGNER, MAUREEN, A
WAGNER, RICHARD,
WAGNER, WILLIAM,
WAGNER, DANIEL,
WAGNER, JR, BURT,
WAIBEL, FRANCINE,
WALANO, MICHAEL, N
WALCZAK, DANIEL,
WALCZAK, THEODORE, J
WALKER, CHARLEY, J
WALKER, DAVID, L
WALKER, GARVEY, J
WALKER, RONALD, D
WALKER, WILLARD, T
WALKER, JAMES, E
WALKER, JOEL, D
WALL, GERALD, V
WALLACE, HERMAN, J
WALLACE, MICHAEL,
WALLACE, PAUL, E
WALLACE, PHILLIP,
WALLACE, RONALD,
WALLANDER, ROBERT, J
WALLINGTON, WILLIE, A
WALSH, BRIAN, M
WALSH, DANIEL, J
WALSH, DESMOND,
WALSH, GERALD, A
WALSH, HENRY,
WALSH, JAMES, M
WALSH, JAMES, P
WALSH, JEANNETTE, M
WALSH, JEROME, S
WALSH, JOSEPH, P
WALSH, RAYMOND,
WALSH, THOMAS, E
WALSH, VINCENT, J
WALSH, WILLIAM, J
WALSKI, JOSEPH, S
WALTEMATH, JAMES, J
WALTER, KARL, F
WALTERS, LEO, E
WALTON, HOMER,
WANDEL, HERBERT, F
WARD, BERNARD, J
WARD, JAMES,
WARD, JAMES, E
WARD, JEROME,
WARD, JESSE, C
WARD, LONNIE,
WARD, MARIJO, K
WARD, PAUL, S
WARD, RAY, C
WARD, THOMAS,
WARD, JR, JOHN, G
WARE, HENRY, D
WARE, STEVEN,
WARLING, EUGENE, R
WARNER, PATRICIA,
WARYWODA, JERRY,
WASCO, JOHN,
WASHINGTON, ANTHONY, D
WASHINGTON, DON,
WASHINGTON, TONI, M
WASHLOW, WILLIAM,
WASMUND, ROBERT,
WASNER, ROBERT,
WASSERMAN, JEROME,
WATSON, ESTHER, S
WATSON, EUGENE, A

WATSON, LAWRENCE, E
WATSON, WILLIAM,
WATTS, BILLY, L
WATTS, STEPHEN, A
WAXMONSKY, GERALD, J
WEATHERLY, III,
HOUSTON, H
WEATHERS, GEORGE, E
WEAVER, MICHAEL, A
WEAVER, MICHAEL, J
WEBB, CORNELL,
WEBB, JAMES, H
WEBB, KENNETH, M
WEBB, KENNETH, W
WEBB, LAURA, M
WEBBER, GEORGE, A
WEBER, MATTHEW, E
WEBER, ROBERT, M
WEBSTER, ARMEATHA, E
WEDSTER, RUTH,
WEEMS, ALVIN,
WEHRS, RAYMOND, R
WEIR, GEORGE,
WEISSKOPF, ROBERT, J
WEITZMAN, DAVID,
WELBEL, DAVID, H
WELCH, III, EDDIE, L
WELLS, HERVEY, A
WELNINSKI, ANTHONY,
WELSH, JOHN,
WELTE, EDWARD, J
WENDT, WILLIAM, R
WENGEL, DAVID, J
WENSKUS, JR, ANTON, J
WERNER, JOHN, W
WESBROOKS, WATSON, T
WESOLEK, RALPH, W
WESOLEK, WILLIAM, E
WEST, RICHARD, L
WEST, THOMAS, H
WESTBROOK, JOEL,
WESTLOVE, MICHAEL, W
WESTON, ROBERT, A
WESTPHAL, TRACY,
WEYER, CHARLES, R
WEYER, GERALD, A
WEYLAND, THOMAS, N
WHALEN, CORNELIUS, W
WHALEN, ROGER,
WHALEN, THOMAS, M
WHALEN, WILLIAM, A
WHARRY, GWEN, M
WHEELER, VAYNE, A
WHELIHAN, FRANK, J
WHITE, ALLEN, L
WHITE, CEDRIC, M
WHITE, CHARLIE, G
WHITE, CLARK,
WHITE, DERRELL, C
WHITE, DONALD, A
WHITE, HARDY,
WHITE, JAMES, J
WHITE, JEWEL, V
WHITE, MARGARET, A
WHITE, PATRICK, V
WHITE, PHILLIP, L
WHITE, RALPH, D
WHITE, JOHN, E
WHITE, III, BENJAMIN, H
WHITEMAN, ROBERT, M
WHITESIDE, GEORGE, M
WHITMORE, ROY, L
WHITTENHALL, PAUL, L
WICHT, DARLENE, D
WICK, MICHAEL, A
WICKERY, KEVIN,
WIDERSTROM, JR,
CHARLES, W
WIDLACKI, JEFFREY, A
WIEMELER, HENRY,
WIESINGER, MAJA,
WIGGINS, THOMAS, J
WIKTOREK, MARK, C
WILBERT, JOSEPH, B
WILCOX, JOSEPH, N
WILCOX, LOUIS, E

WILCZAK, ANTHONY, M
WILINSKI, STEPHEN, J
WILKINS, ESAU, D
WILKINSON, ROBERT, ?
WILKOSZ, LEO, E
WILKOWSKI, EDWARD, M
WILLAND, BRUCE, T
WILLER, WAYNE, A
WILLIAMS, ARTHUR, L
WILLIAMS, BRAD, R
WILLIAMS, DANA, L
WILLIAMS, DAVID, B
WILLIAMS, DEBORAH,
WILLIAMS, DELORES, M
WILLIAMS, EUGENE,
WILLIAMS, FRANCHESCA, A
WILLIAMS, HARRY,
WILLIAMS, ISIDORE,
WILLIAMS, ISSAC,
WILLIAMS, JESSE, JR
WILLIAMS, JIMMIE,
WILLIAMS, JOHN,
WILLIAMS, LOUIS, J
WILLIAMS, NICHOLAS, M
WILLIAMS, REGINA,
WILLIAMS, RICHARD, H
WILLIAMS, ROBERT, A
WILLIAMS, ROY, L
WILLIAMS, TEDDY,
WILLIAMS, TERESA, J
WILLIAMS, THEODORE,
WILLIAMS, THOMAS, L
WILLIAMS, TRACY,
WILLIAMS JR, ISADORE,
WILLIAMS JR., JESSE,
WILLIAMS, CHARLES, K
WILLIAMS, JR, CLARENCE,
WILLIAMSON, JAMES, P
WILLIAMSON, MICHAEL, P
WILLINGHAM, DALE,
WILLINGHAM, RUSSELL, L
WILLNER, JOHN, E
WILSON, ALFRED,
WILSON, CAPATORIA, Z
WILSON, DAVID,
WILSON, EARNEST, B
WILSON, HERBERT, L
WILSON, JOHN, J
WILSON, KELLY, D
WILSON, MICHAEL, J
WILSON, RALPH, G
WILSON, ROGER, D
WILSON, JR, THOMAS,
WILSON, JR, HARRY,
WINDHAM, JERELYN,
WINISTORFER, GEORGE,
WINKLE, WILLIAM, D
WINSBERG, JERI, L
WINSTEAD, EDWARD, J
WINTERS, CAROL, A
WINTERS, LAWRENCE, B
WINTERS, LETINA,
WINTERS, NORMAN, W
WIORA, EDWARD, G
WIPPO, CHARLES, T
WISE, DAVID,
WISER, ROBERT, E
WISKUR, RALPH, M
WISNIEWSKI, JAMES,
WITTENBERG, ALAN,
WITTENBERG, JOHN,
WITTHOEFT, WARREN, M
WITTY, ROY, A
WNUK, JULIAN, C
WOITAS, KENNETH, M
WOITOWICH, WILLIAM, N
WOJACK, JAMES,
WOJCIECHOWSKI, RONALD, S
WOJCIECHOWSKI, W, R
WOJCIK, JOSEPH,
WOJEWOCKI, LEONARD, F
WOJNAR, DENNIS, M
WOJTECKI, PAUL, A
WOJTOWICZ, DONALD,
WOJTOWICZ, LOUIS, M

WOLAK, ELIZABETH, E
WOLAK, STAN, L
WOLANSKI, JOHN, C
WOLDEIT, DEBORAH, A
WOLF, ALBERT, P
WOLFE, JOSEPH, E
WOLLSCHLAGER, THOMAS, J
WOLVERTON, DONALD,
WOMACK, RHONDA, E
WONSOWICZ, STANLEY, G
WOOD, CHARLES, E
WOOD, CLIFFORD, E
WOOD, DONALD, C
WOOD, PETER,
WOODS, ANTHONY,
WOODS, HARVEY, H
WOODS, HEDY,
WOODWARD, WILLIAM, T
WOTRING III, JOHN, J
WOULLARD, FRED, A
WOZNIAK, RONALD, J
WOZNICKI, DIANA, L
WOZNICKI, LAWRENCE,
WOZNY, ROMAN, T
WREN, ROBERT, M
WRIGHT, CHARLES, L
WRIGHT, GERALD, L
WRIGHT, JOYCE, S
WRIGHT, WILLIAM, E
WRIGHT, WILLARD, J
WRONKA, LAWRENCE, A
WRONKOWSKI, ANTHONY, R
WRONOWSKI, JAMES,
WRONSKI, BRUCE,
WRONSKI, WALTER, W
YAMASHIROYA, GARY, H
YAMICH, ERNEST, R
YATES, KAREN,
YATES, ROBERT, E
YAWGER, RONALD,
YEDLINSKI, JARRETT, A
YOKAS, THEODORE,
YOUNG, CLARENCE,
YOUNG, DONNA, J
YOUNG, JAMES, L
YOUNT, CHRISTINE, M
YUNKER, LEONARD, W
ZABLOCKI, STANLEY, T
ZABOROWSKI, FRANK, J
ZACCAGNINI, JOSEPH, A
ZACHARIAS, PAUL,
ZACHARIAS, ROGER, R
ZACHWIEJA, DONALD, L
ZAGLIFA, CHRIS, J
ZAGLIFA, FRANCES, J
ZAJAC, DENNIS, B
ZAJAC, JOHN, J
ZALALIS, LEE, W
ZALESNY, ROBERT, M
ZALEWSKI, THEODORE, F
ZANDERSON, MILKA, J
ZAPOLSKY, THOMAS, R
ZAPRZALKA, CHRISTINE, A
ZARAGOZA, LAWRENCE,
ZAREMBA, RICHARD, W
ZAREMBA, THOMAS, H
ZAREMBA, WILLIAM,
ZARTLER, BERNARD, L
ZATOR, KENNETH, W
ZAUCHA, GREGORY, T
ZAWILA, ANTHONY, J
ZBELLA, JAMES, E
ZBOREK SR, DENNIS, J
ZDORA, ROBERT,
ZELAZIK, EDMUND, R
ZELAZO, DAN, T
ZELITZKY, ADAM,
ZELLAK, DONALD,
ZENERE, MARK, A
ZEPEDA, MOSES,
ZERFASS, JAMES, R
ZIC-SCHLOMAS, VIRGINIA, M
ZIEGENHORN, MAUREEN, E
ZIEGLER, MAX,
ZIELINSKI, EUGENE,
ZIELINSKI, JEROME, J

ZIEMANN, WILLIAM,
ZIENTARSKI, RICHARD,
ZIERK, RALPH, H
ZIMA, GEORGE, J
ZINN, RUTH, C
ZITEK, PAUL,
ZOCH III, JOHN, J
ZORKO, KATHLEEN, A
ZOTTO, JOHN, R
ZUKLIC, NICHOLAS, J
ZULEY, RICHARD, P
ZURAWIK, JAMES, E
ZUZICH, JOSEPH,
ZYGOWICZ, JAMES, T

Plaintiffs-Petitioners in *Accosta v. City of Chicago*

PLAINTIFFS:

JUAN ACCOSTA, JESSE ACCOSTA, PAUL ABRAM, ERWIN ACOX, CHRISTOPHER ADAMS, ALAN ADAMSKI, ARLENE ADAMSON, KATHLEEN AGUINAGA, ARTHUR ALANIZ, STEWARD ALDERSON, MELVIN ALEXANDER, JOHN R. ALLANSON, LAWRENCE ALONZO, DENNIS ALTOBELLE, ROSENDO ALVAREZ, LUIS ALVERIO, LUIS ALVIZU, DAN ANCZER, MARK ANDERSEN, DEREK ANDERSON, JOHN ANDERSON, ROBERT ANDERSON, CYNTHIA ANDERSON-DAVIS, GARTH ANGEL, JOHN ANTOS, JOSEPH ANTOSH, SHERMAN ARMSTRONG, PATRICK ARNOLD, ROBERT ARRIGO, LINDBERGH ASKEW, DALE AUGLE, LINDA AUGUSTUS, MYRON AUSTIN, ROBERT BAADE, JAMES BAGNOLA, KEVIN BAHR, HERBERT BAILEY, JR., ANTONIO BAIO, FRANK BAIO, KENT BAKER, ROBERT BAKER, RICHARD BAKKEN, EDWARD BAKSINSKI, CHARLES BALCITIS, JEFFREY BALCITIS, MICHAEL BALLARD, JAMES BALORWER, WALTER BALUK, ROGER BANKS, STANLEY BANKS, LEONARD BARBARONE, JILES BARKSDALE, MELVIN BARNA, DENNIS BARNES, JOSEPH BARNES, LAWRENCE BARNES, CLEVELAND BARRETTI, JOSEPH BARRERA, LARETTA BARRIS, DONALD BARRY, JOHN BARTON, CHARLES BARTUCCI, SR., JENNIFER BASA, MICHAEL BASS, ALEXANDER BEASLEY, SUSAN BEAUREGARD, ALAN BEDNAREK, JAMES BEDNARKIEWICZ, KARIN BEHRMANN, ROBERT BELCZAK, JOSEPH BENIGNO, MILTON BENJAMIN, MICHAEL BENNON, THOMAS BENOIT, RONALD BERKHEISER, GREGORY BERNACKI, JOHN BERRY, REGINALD BETTS, GEORGE BIALECKI, BARBARA BIES, WALTER BIESIADA, PAT BLACK, HAROLD BLACKMAN, BERNARD BLAKE, JOSEPH BLAYE, MIKE BLAZIS, MICHAEL BLOCK, RONALD

BLOMSTRAND, KATHLEEN BOEHMER, HERBERT BOOKER, JAMES BOOKER, JEFFREY BOOKER, GERTHA BOOTH, ANDREW BORKOWSKI, JERALLD BOSAK, MARIE BOSKY, JOSEPH BOTWINSKI, KENNETH BOUDREAU, GEORGE BOWNESS, MARY BOYLE, RICHARD BOYLE, SANDRA BOZIC, CLARENCE BRADLEY, JUANITA BRADLEY, DANA BRADY, GAIL BRADY, PATRICIA BRANDENBURGER, MARK BRATTON, MICHAEL BRAZEL, JOHN BRENNAN, THOMAS BRENNAN, VICTOR BRESKA TERRY BRESLIN, MICHAEL BRESNEN, RAY BRODER DORF, JOHN BROGAN, TIM BROPHY, CHARLES BROWN, DERRICK BROWN, LORNA BROWN, MIKE BROWN, SHIRLEY BROWN, STEVEN BROWNFIELD, NORMAN BROZYNSKI, DAVE BRUCE, WILLIAM BRUNO, JOHN BRYA, BRUCE BUCK, TOM BUGAJSKI, GARY BULAVA, JILL BULMASH, CHARLES BURGER, SHEILA BURKE, WILLIAM BURKE, PAMELA BURMISTRZ, CHARLES BURNS, PEGGY BURTON, MELVIN BUSH, ALBERT BUSIN, DESMOND BUTLER, GARY BUTLER, JAMES BUTLER, JAMES BUTZEN, MICHAEL BYRNE, WILLIAM BYRNE, THOMAS BYRON, EDWARD CAGNEY, PETER CALANDRA, RAMON CALIXTO, JOHN CALLAGHAN, MICHAEL CALLAHAN, KEITH CALLOWAY, CLARK CAMPBELL, PHILLIP CAMPBELL, ALVIN CAMPBELL II, JOSEPH CANNON, AUGUST CAPORUSSO, JOHN CAREY, JOHN CARNEY, KEVIN CARNEY, WILLIAM CARROLL, THOMAS CARVIS, EDUARDO CASAS, PATRICIA CASEY, DEAN CASPER, ANDREW CASSARO, CARLOS CASTILLO, FRANK CASTRO, RADAMES CASTRO, BEN CELANO, CORY CHAN, MICHAEL CHASEN, DAVID CHERRY, MICHAEL CHIODO, STEVEN CHIRELLO, JAMES CHMIEL, MICHAEL CIECHON, GEORGE CINCOTTA, JOSEPH CIUKOWSKI, MICHAEL CLANCY, LAWRENCE CLARK, TIMOTHY CLARK, JAMES CLARK, LEMUEL CLAY, WILLIE CLAY, MILTON CLAYTON, MICHAEL CLEARY, HOSIE CLEMONS, VITO CLESCERI, MICHAEL

CLIFFORD, YVETTE CLINKSDALE, MARY ELLEN CLOHERTY, JAMES CLOONAN, SHAWN COBB, QUEDELL COCHRAN, JOSEPH CODINA, WILLIAM COFFEY, DANIEL COFFMAN, TITUS COLEMAN, SIDNEY COLEMAN, JR., BRENDA COLLINS, EDWARD COLLINS, JAMES COLLINS, JOSEPH COLON, MANUEL COLON, JAMES COMITO, ARTHUR CEDRIC COMPTON, BILLY CONKLIN, RALPH CONONE, JR., WALTER CONRAD, CARMEN CONSOLINO, WILLIAM COOGAN, FRANK COOL, RONALD COOPER, COLLEEN CORCORAN, GLORIA CORCORAN, TIMOTHY CORCORAN, ATHENA CORDOGAN, PATRICK CORRIGAN, BARBARA COSTANZO, FRANCIS COSTELLO, JAMES COTTER, JAMES COTTON, RAYMOND COWELL, ROBERT COX, ROBERT COZZO, THOMAS CRADICK, RONALD CRAWFORD, SHEILA CRAWFORD, JERRY CRAWLEY, ANDREW CREAGH, DANIEL CREAMER, CRAIG CRISTOE, VIRGINIA CRONK, RICHARD CROTTY, RALPH CULVER, EDWARD CUNNINGHAM, TOM CUNNINGHAM, JAMES CUSAK, FRANK CUSIMANO, EDWARD CYMBALISTY, CELESTE CYRUS, MICHAEL D'ALESSANDRO, RAYMOND D'ANDREA, JOHN DALESANDRO, LEE DALEY, MATTHEW DALLIO, EVE DALY, KEVIN DALY, PETER DAMBRAUSKAS, JOSEPH DAMMONS, ELWOOD DANIELSON, CHARLOTTE DANOVARO, MELVIN DARBY, CAREY DAVID, LORENZO DAVIS, TERENCE DAVIS, ROBERT DE MARCO, PAUL DE ROSA, JOHN DEBARTOLO, RICHARD DECKMAN, WILLIAM DEGIULIO, DONALD DEGMON, JAMES DELAFONT, MICHAEL DELAHANTY, DAVID DELANEY, JOHN DELGADO, PHILIP DELIA, LEE DEMARS, WILLIAM DEMLING, CARL DEMMA, PHYLLIS DENHAM, HAROLD DENNIS, ENRIQUE DIAZ, KENNETH DIENETHAL, RICHARD DIETRICH, FRANK DIGRAZIA,OLLIE DIXON, KEVIN DOCHERTY, ROBERT DOELKER, EDWARD DOLAN, DAVID DOMBKOWSKI, GUS DOMENECH, LORRAINE DOMINGUEZ, WALTER DONALD,

JOE DONALY, WILMAN DONES, KENNETH DOOLEY, DAVID DORRANCE, MARTIN DORSEY, LESTER DORSEY JR, IVAN DOSTAL, JOHN DOTY, CORNELIUS DOWNEY, CLIFFORD DOYLE, LOUIS DRAKULICH, MICHAEL DREW, JAMES DRISH, WILLIAM DRISH, FRED DROCHNER, ROBERT DUBLINSKI, JOHN DUFFY, STEVEN DUFFY, TERRENCE DUFFY, THOMAS DUFFY, RICHARD DUGGAN, MICHAEL DUHIG, CLAUDE DUNLAP, JOHN DURKIN, WILLIE EAGLIN JR, CARSON EARNEST, THOMAS EARTH, RONNIE EDMOND, DEBBIE EGAN, JAMES EGAN, WILLIAM EGAN, RICHARD EHRMANN, DENNIS EICHLER, BARRY EICHNER, JOSEPH EISA, MICHAEL EJNIK, ANTHONY ELLIOTT, CHARLES ELLISON, ROBERT ELLMAN, MICHAEL EMMETT, JESSE ENG, DREW ENGLERT, BRUCE ENGSTROM, RICCARDO ERBACCI, KYLE ERBACHER, STEPHEN ERGISH, RAYMOND ERNST, RUSSELL ESCHE, VICTOR ESCOBEDO, RONALD ESPOSITO, LAWRENCE EVANS, GARFORD EVELAND, DANIEL EVERETT, HARRY EVERETT, GERALD EWALT, MICHAEL FABSITS, THOMAS FAHY, ROBERT FALKENBERG, PATRICK FANELLA, JOHN FARRELL, JAMES FELMON, JAMES FENNESSY, DANIEL FEREK, EMMA FERNANDES, VITO FERRO, THOMAS FESSETT, NELIDA FIGUEROA, BOLESLAW FILIPIAK, JOSEPH FINE, MICHAEL FINE, DONNA FINLAYSON, WILLIAM FINN, PETER FISCHER, DANIEL FISHER, PATRICK FITZGERALD, ROBERT FITZGERALD, ROSEANN FITZGERALD, JAMES FLAHERTY, LENORE FLAHERTY, CHERYL FLEMING, PATRICK FLEMING, JOHN FLEMING, JR., JULIA FLETCHER, JAMES FLOORE, DIEGO FLORES, MARTIN FLYNN, JOHN FOLEY, JOHN FOLEY, NANCY FOLEY, WILLIAM FOLEY, CARL FORD, RALPH FORD, JR., JACK FORTINO, WILLIAM FOSTER, DAVID FOX, ALBERT FRANCIS, ANTHONY FRANICEVICH, DANIEL FRANKLIN, WAYNE FRANO, SR.,

TERRENCE FRANZEN, MIKE FRATTO, CHARLES FREED, HENRY FREEMAN, WILLIAM FREEMAN, VAUGHN FRENCH, ROBERT FRIEDMAN, DAVID FRIEL, TERRY FRIGO, JEAN FROMEL, ROBERT FROMEL, BARBARA FROST, RONALD FROST, ARTHUR FUITH, ALAN FUJARA, MARK FULLA, ANNISE FULLER, LORETTA FULTZ-STEVENS, ROBERT GABLIN, MICHAEL GAHAN, MARTIN GAINER, ARMANDO GALAN, JOHN GALLAPO, PHILIP GALLOWAY, CLINTON GANDY, GERALD GANEY, WILLIE GANISON, ALAN GARANT, MARCOS GARCIA, WILLIAM GARCIA, CHARLES GARDNER, RODERICK GARDNER, JOHN GARGUL, JOSEPH GAROFALO, JR., BRIAN GARRITY, JOHN GARRITY, MARTIN GARRITY, PATRICK GARRITY, HERMAN GARY, PEDRO GARZA JR, FRANCINE GATSCH, JOSEPH GAWLIK,GREGORY GEISBUSH, PARRIS GEORGE, GENE GERALI, MARIO GIANNONI, TERRENCE GIBBONS, CALVIN GILES JR, MATTHEW GILIBERTO, PATRICK GILLESPIE, DARRYL GILLIAM, THOMAS GIUDICE, DOUGLAS GLASS, WALTER GLOCKE, CRYSTAL GLUGLA, STEPHEN GLYNN, TIMOTHY GOC, JOHN GOLAB, DEBORAH GOLD, PATRICK GOLDEN, CHARLES GOMEZ, CHRISTINE GOMOLSKI, TERRANCE GOMOLSKI, ARMANDO GONZALEZ, GUADALUPE GONZALEZ, PORTER GOOSBY, RONALD GORENCE, STANLEY GORNIAK, KEVIN GRAFF, DENNIS GRAHAM, QUEEN GRAHAM, JACK GRANADON, RICHARD GRAND, DONALD GRANEY, DWIGHT GRANLUND, ANTHONY GRAZIOSO, JOSEPH GRAZIOSO, SAM GRECO, ENISE GREENE, ROBERT GREENE, JOHN GREGORY, BURDETT GRIFFIN, MARK GRIFFIN, EDDIE GRIFFIN II, KENNETH GRIZZARD, MARK GROHOVENA, CYNTHIA GROSS, EDWARD GROSS, MICHAEL GROTH, RICHARD GRUSZKA, ALLAN GRYZB, SHARON GUIFFRA, ALBERT GUTIERREZ, GEORGE GUTIERREZ, HIRAM GUTIERREZ, MARYLOU GUTIERREZ, PETER GUTIERREZ, ALLEN HADAC, WILLIAM HAIMAN, LARRY

HALL, DANIEL HAMMOND, JENNIFER HAMPTON, KAREN HANSEN, SONJA HANSEN, JOHN HARAN, TOM HARDER, TIMOTHY HARDY, SR., WAYNE HAREJ, JOHN HARMS, THOMAS HARMSEN, ERNEST HARRIS, LESLIE HARRIS, TERENCE HART, TERRENCE HARTE, MICHAEL HARVEY, JOHN HAUGH, KENNETH HAUSER, MARK HAWKINS, JEANETTE HAYES, KATHLEEN HAYES, MAUREEN HAYES, PHIL HAYMAN, SHERRY HAYNES, ROBERT HAYS, ROBERT HAYSLIP, JOHN HEAGNEY, DANIEL HEALY, LEONARD HEARD, PATRICK HEENAN, ROBERT HEHL, MICHAEL HEIL, ANTHONY HEINS, LAWRENCE HELLWITZ, MARCELLOUS HENDERSON, RONALD HENDERSON, DONALD HEHEHAN, STEVE HENSON, ANTONIO HERNANDEZ, LEOPOLD HERNANDEZ, PAUL HERNANDEZ, ROBERT HETHCOAT, JOHN HETT, PAUL HEYDEN, LAUREL HICKMAN, RENE HIDALGO, OCIE HIGH, MICHAEL HILDEN, KEITH HILL, MILTON HILL, RUSSELL HILL, RANDALL HILLER, RONALD HITE, SR., MARK HOFER, KENNETH HOFFMAN, JERRFEY HOFFMANN, RANDY HOLCOMB, JOHN HOLDEN, RICHARD HOLMAN, DONALD HOLMEN, WALTER HOOKER, GREGORY HORKAVY, STEPHEN HORKOVY, RONALD HORKY, ROSS HORNE, THOMAS HORTON, THOMAS HORTON, PATRICK HOSTY, MICHAEL HOURIHANE, JANIT HOWARD, CHARLES HOWARD, JR., KEVIN HOWLEY, LORETTA HUBERTS, DENNIS HUGHES, DENNIS W. HUGHES, MARY HUGHES, MICHAEL HUGHES, THOMAS HUGHES, CAROLYN HUMPHREY, DAVID HUNDRIESER, ROBERT HURST, JERRY HUTCH, RICHARD HYBL, JAMES INDORANTO, SEBASTIAN INGRAFFIA, JOSEPH IPPOLITO, ROY ISAKSON, CAROLYN JACKSON, CHERYL JACKSON, HENRY JACKSON, JAMES JACKSON, RENARD JACKSON, STEPHEN JACKSON, THOMAS JAGUSZEWSKI, THEODOSIA JAKS, GREGORY JANETTAS, EDWARD JANKO, KENNETH JANUSZ, FRANCIS JANUSZEWSKI, JOSEPH JEANOTTE, ROBERT

JEFFERIES, JESSE JEFFRIES, TONY JIN, DONALD JOHANNSEN, DAVID JOHNSEN, GLENN JOHNSEN, CHARLES JOHNSON, CORNEALIUS JOHNSON, DAVID JOHNSON, DWAYNE JOHNSON, EDDIE JOHNSON, GERALDINE JOHNSON, HAROLD JOHNSON, JAMES JOHNSON, JERRY JOHNSON, JOANNA JOHNSON, JOHN JOHNSON, JOHNNY JOHNSON, KENNETH JOHNSON, LARRY JOHNSON, ROBERT JOHNSON, WANDA JOHNSON, WARREN JOHNSON, MAUDESSIE JOINTER, JAY JONAS, EDWIN JONES, GREGORY JONES, JENNIFER JONES, RICHARD JONES, WILLIAM JONES, LORENZO JONES, ANDREW JONES JR, GEORGE JOZWIAK, MARK JUSKA, JAMES KACZOR, HAROLD KAGAN, STEVE KAJDI, PATRICIA KANE, ERNEST KANZLER, ALLEN KARAUS, THOMAS KARNICK, RICHARD KARY, STANLEY KATALINIC, PATRICK KEANE, PATRICK KEATING, FRANCES KEBR, DANIEL KEENAN, GEORGE KELLEHER, RONALD KELLER, THOMAS KELLER, FRANK KELLER, JAMES KELLEY JR., JOHN KELLY, OLIVER KELLY, PHILLIP KELLY, THOMAS KELLY, ANDREW KELSIE, GARY KEMPF, EDWARD KENDZIOR, HENRY KENERSON, JAMES KENNEALY, ALPHONSO KENNEDY, MICHAEL KENNEDY, MICHAEL KENEDY, GARY KIEDUK, MICHAEL KILL, RONALD KIMBALL, FREDERICK KING, LARRY KING, LAWRENCE N. KING, SIDNEY KING, HERSHEL L KING, JR., MICHAEL F. KINNALLY, JOSEPH KINSELLA, MICHAEL F KISSANE, WILLIAM KISSANE, RICHARD KLASEN, EDWARD KLEIN, RUSSELL KLEIN, HELEN KLINER, SAUL KLUPT, JAMES KMIECIK, LARRY KNASIIAK, JOHN KNIGHT, EDWARD KODATT, EDWARD KOOP, TIMOTHY KOREN, DAVID KOSIEWICZ, PETER KOSKI, JAMES KOSTKA, JAMES KOSTRO, JOSEPH KOWALSKY, CAROLYN KRAUSE, KENNETH KRAUTSTRUNK, RAYMOND KRAWCZYK, EDWARD KROYER, IRENE KRUGER, FRANK

KRUPA, GREGORY KRYWAR, LAURA KUBIAK, LEONARD KUKULKA, MICHAEL KUNIS, HAROLD KUNZ, STANLEY KUS, PAUL KUSINSKI, JOSEPH KUTIANSKI, NORBERT KUTKA, PHILLIP KWASKINSKI, EZELL KYLE, JR, DOMINIC LA CALAMITA, RODERICK LA GARDNER, EDWARD LA PIERRE, ROBERT LABBE, LEROY LADENDORF, MARILYN LAMPARD, PHIL LANE, WILLIAM LANGE, JAMES LARNER, PAUL LAROSA, JOHHNY LARRY, JR., JOSEPH LASKERD, LINNEA LASKEY, FRED LAUBACH, JOHN LAUGHRAN, JOHN LAURIE, ROBERT LAZO, KENNETH J. LAZZARO, MICHAEL LAZZARO, BRIAN LEE, MARTIN LEE, JOHN LEEHY, PHILIP LIEBAS, JOSEPH LEISER, HENRY LEJA, JOSEPH LENDINO, THOMAS LENIHAN, CARMELLO LEODORO, FRANK LESZCZYNSKI, THOMAS LEVA, CAROLE P. LEWANDOWSKI, RONALD LEWIS, JOHN LEWISON, GERALD LIBERTY, MORTON LIEBERMAN, BRUCE LIPMAN, JAMES LISTON, RONALD LITTLE, ROBERT LIZIK, JOSEPH LOBIANCO, JAMES LOFTUS, ADOLF LOPEZ, ENRIQUE LOPEZ, RICHARD LOSIK, JAMES LOTITO, ROBERT LOUGHRAN, KAY LOUIS, OTIS LOVE, ANTHONY LOWERY, ROBERT LOWERY, HAROLD LUCAS, RUSSELL LUCAS, WILLIAM LUMPKIN, JOSEPH LUPO, DANIEL LYMAN, MARY ELLEN LYNCH, GERALD LYONS, ANDREW MACK, DONALD MACK, ERNEST MACK, PATRICK MADDEN, THEODORE MADSEN, ROBERT MAGOON, JAMES MAHER, GLORIA MAJERCZYK, ROBERT MAJOR, JAMES MALEWSKI, CLARENCE MALINGER, FRANK MALITO, JEROME MALKOWSKI, MICHAEL MALONE, ROBERT MALONEY, ROBERT MALPICA, MARY MALTESE, THOMAS MANELLA, PAUL MANNING, WILLIAM MARBACK, KATHLEEN MAREK, GREGORY MARGELWSKI, JEAN MARONEY, ANDREW MARQUEZ, JOHN MARQUEZ, CHARLES MARSCHKE, ELMER MARSHALL, CHARLES MARTIN, MICHAEL MARTIN, TAMERON MARTIN, FRANK MARTIN, ARNOLD MARTINEZ, DORIS

MARTINEZ, JUAN MARTINEZ, STEVEN
MARTINEZ, THOMAS MARTUCH, ADELBERT
MARX, DONALD MASNJAK, DIANE MASIN,
RUBY MASTIN, ELLIOTT MATHEWS, SR.,
JOHN MATISHAK, STEVEN MATTES, GAIL
MAUROVICH, JAMES MAZIARRA, TIME MC
AULIFFE, JOHN MC AVOY, FRANK MC CALL,
JOHN MC CANN, EDDIE MC CANN, JR., RONALD
MC CAROLL, SR., DAN MC CARTHY, DENNIS
MC CARTHY, JANET MC CARTHY, TERRY
MC CARTHY, ROCHELLE MC CLAIN, SHIRLY
MC CLAIN, KATHLEEN MC CLORY, PATRICK
MC CORMICK, AUTRY MC COY, DON MC COY,
JAMES MC CRAY, BERNARD MC DERMOTT,
PATRICK MC DONALD, JAMES MC DONOUGH,
BERNARD MC ERLEAN, BRIAN MC EVOY,
ROBERT MC FADDEN, DENNIS MC GARRY,
HAROLD MC GHEE, SHERRY MC GIVNEY,
THOMAS MC GRATH, ROBERT MC HUGH,
MICHAEL MC INERNEY, JAMES MC KENNA,
THOMAS MC KENNA, WILLIAM MC KENNA,
RONALD MC LAIN, SCOTT MC LAIN,
DAN MC MAHON, STEVEN MC MURDO,
JOHNNIE MC LENDON, JAMES MEADOR,
GEORGE MEADOWS, TERRENCE MEEHAN,
JOSEPH MEIER, RICHARD MELODY, THURMAN
MELVILLE, MARLA MENDOZA, ALAN MERCADO,
RALPH MEROLA, JR., RONALD MEZIERE,
CHRISTIAN MICHAL, JANE MICHALIK,
JEROME MICHALIK, TONY MICHALWICZ, JAMES
MICKLEBOROUGH, MICHAEL MICKLEBOROUGH,
JOHN MIGAS, ROBERT MIGITZ, SANDRA
MIKOLAJCZYK, WARREN MILCAREK, FARLEY
MILES, BENITA MILLER, EARL MILLER, ERIC
MILLER, KIMBERLY MILLER, ROSE MILLER,
STEVEN MILLER, DAVID MILLIGAN, WILLIAM
MILMINE MICHAEL MINET, PATRICK MINOGUE,
JOHN MISKANIN, CURTIS MITCHELL, KENNETH
MITCHELL, MICHAEL MITCHELL, SANDRA
MITCHELL-SMITH, JAMES MITHEN, ROBERT
MITZNER, ROBERTO MOHEDANO, EDWARD
MOORE, JAMES MOORE, JEAN MOORE,
VIVIECA MOORE-COLEMAN, DAVID MORALES,

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No. 96-1240

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

DANIEL LEAHY, *et al.*,
Petitioners,
v.
CITY OF CHICAGO,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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QUESTION PRESENTED

Whether a municipality with over 12,000 police officers has violated the Fair Labor Standards Act by failing to treat all meal periods of all police officers as working time, when it has agreed in a collective bargaining agreement governing police officers' employment to compensate them at overtime rates whenever they work in excess of eight hours in a day for any reason, including a missed meal period.

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (Pet. A-1 to A-13) is reported at 96 F.3d 228. The opinion of the United States District Court for the Northern District of Illinois (Pet. App. B-1 to B-20) is unreported.

STATEMENT

The Chicago Police Department employs approximately 12,000 sworn officers. See Pet. App. at A-6. Petitioners in these cases, more than 7,600 Chicago police officers, claim that their one-half hour meal period is working time for which they are entitled to pay under section 7(k) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207(k). Under section 7(k), the City must pay

overtime only when, during a 28-day period, police officers have "tours of duty which in the aggregate exceed" 171 hours. See *id.* The City and the Fraternal Order of Police ("FOP"), the exclusive bargaining representative of Chicago police officers, have entered into a collective bargaining agreement that provides for more generous overtime pay than the FLSA requires, see Pet. App. at A-6; it provides that police officers will be paid overtime at the rate of time-and-one-half for all hours worked in excess of eight hours in a day or 40 hours in a week. See Pet. App. at A-5. Police officers work an eight and one-half hour tour of duty with a one-half hour unpaid meal period. See *id.* at A-2. The collective bargaining agreement also sets forth a grievance procedure for disputes between the parties, providing for arbitration before a neutral party agreeable to both sides if a grievance is not resolved at an earlier stage. See *id.* at A-5.

Petitioners here claimed that their meal periods are working time because they must receive permission from a dispatcher before they take a meal break; during the break uniformed officers must remain in uniform and in their assigned districts; officers must be available by radio to the dispatcher; officers in two-person units must take their break at the same time; no more than two officers may congregate at a meal break without prior permission; and officers must respond to civilian inquiries or requests for assistance and maintain departmental courtesy. See Pet. App. at A-3 to A-4. In 1992, the district court granted the City judgment on the pleadings. See Pet. App. at D-1 to D-14. The first appeal of this case to the Seventh Circuit followed. In that appeal, two of the three members of the panel rejected petitioners' claim that the restrictions placed on them during their meal period were sufficient, in and of themselves, to make their meal period work time. See *Alexander v. City of Chicago,* 994 F.2d 333, 341 (7th Cir.

1993) (Crabb, J., concurring); *id.* at 344-45 (Bauer, C.J., dissenting). The fractured panel nevertheless reversed the district court's judgment and remanded the case to the district court because two members concluded that the frequency of interruptions could convert meal periods to working time. See *id.* at 340-41.

The City also argued that the collective bargaining agreement resolved the FLSA question, although we noted that this issue had not been before the district court and no record had been developed on matters pertaining to it. In a footnote in his opinion, Judge Cudahy stated that the collective bargaining agreement was only one factor that a factfinder should consider when determining whether police officers were relieved from duty at meal time. See *id.* at 339 n.11. In her concurrence, Judge Crabb decided that she could properly consider only the pleadings, and did not address the effect of the collective bargaining agreement on the petitioners' claim at all. See *id.* at 340-42. In dissent, Chief Judge Bauer expressed the view that the collective bargaining agreement comported with the FLSA and hence provided the City with a defense to liability. See *id.* at 344-45.

Discovery on remand showed that there were officers who had been paid overtime for working during a missed meal period. Leahy Rec., Pl. Ex. Vol. 4, Ex. L; *id.* Vol. 5, Ex. M.[1] The record also showed that some officers were not paid and had filed grievances regarding meal periods. Some grievants prevailed and were paid overtime for meal periods in which they worked; one was paid for his meal period, but not at overtime rates because he had not worked more than eight hours during the tour of duty in question; while other grievances were denied.

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[1] Four cases were consolidated in this appeal. The documents filed on summary judgment all appear in the record in *Leahy v. City of Chicago*, No. 95-2015.

Leahy Rec. 190, Kimber Aff. Exs. A-F. For example, two officers were denied overtime pay for a meal period because their watch commander had seen them take a full meal period while they claimed they were taking a personal break. *Id.* at Ex. B. In all, petitioners filed more than 200 affidavits of police officers, many of which stated that the officer had not requested pay for missed or interrupted meal periods. Although many of the affidavits made the conclusory allegation that requests for pay were discouraged by supervisory personnel, not a single officer who filed an affidavit identified a specific occasion on which he or she was discouraged from requesting pay, nor did any identify any supervisory personnel who allegedly discouraged officers from requesting pay for missed or interrupted meal periods. See Pl. Ex. Vol. 1-3. Moreover, none of the affidavits identified a single specific occasion on which the affiant worked during a meal period, ultimately worked more than eight hours during a tour of duty, requested pay for the missed or interrupted meal period, and was denied pay on the ground that overtime is not available for missed or interrupted meal periods. See *ibid.*

On this record, the City filed a motion for summary judgment, raising, among other issues, that the collective bargaining agreement protected the officers' FLSA rights. All parties agreed that discovery on the issues raised in the motion for summary judgment was complete. See Pet. App. at A-4. In March 1995, the district court issued a memorandum opinion and order granting summary judgment in favor of the City, but rejecting both of the grounds in the City's motion. See Pet. App. at B-1 to B-20. The district court granted the City summary judgment on the ground that the restrictions on officers and the interruptions did not make officers' meal periods compensable work time under the FLSA. See *id.* at B-20. Petitioners appealed. On appeal, the City agreed with

the petitioners that discovery was not yet complete on the question of the frequency and duration of interruptions, but all parties acknowledged that discovery was complete on the issues raised by the City's motion for summary judgment which included the collective bargaining agreement. See *id.* at A-4.

The Seventh Circuit held that the City was entitled to summary judgment on the basis of the collective bargaining agreement. See Pet. App. at A-7. The majority concluded that under the collective bargaining agreement, the City will pay overtime to an officer who works more than eight hours in a day as a result of working during a meal period. See *id.* at A-6. Noting that the petitioners claimed that the City must pay all police officers for all meal periods without individual resolution of the question whether an officer has worked during his or her meal period, the court found such a rule would require the City to pay overtime to officers "for doing nothing more than eating during their meal periods." *Id.* at A-7. The court held that in a police department of more than 12,000 officers working different shifts in different districts throughout the City, the grievance procedure set forth in the collective bargaining agreement provides the most efficient method to resolve whether an individual officer's meal period constituted compensable work time. *Id.* at A-6 to A-7. Judge Cudahy dissented. See *id.* at A-7 to A-13.

ARGUMENT

Petitioners seek review of this case on the basis that the decision of the Seventh Circuit conflicts with this Court's decision in *Barrentine v. Arkansas-Best Freight Systems, Inc.*, 450 U.S. 728 (1981), and with the Tenth Circuit's decision in *Lamon v. City of Shawnee*, 972 F.2d 1145 (10th Cir. 1992), cert. denied, 507 U.S. 972 (1993). The decision below, however, conflicts with neither. The decision in this case turned upon the details of the record that was before the district court on summary

judgment. That record demonstrated that petitioners are in fact compensated when they work during a meal period. That is all the FLSA requires.

In particular, the record here shows that the collective bargaining agreement requires the City to pay overtime to officers who work more than eight hours in a tour of duty; that the City had not refused to pay overtime to officers who had worked during a meal period; that it had paid overtime to some officers who had worked during their meal periods; that for perfectly legitimate reasons it had denied pay to some officers who claimed to have worked during their meal periods; and that many petitioners themselves acknowledged that they did not request pay for missed or interrupted meal periods. Although petitioners claim that the "threshold factual issue" whether they are denied compensation for working time has not yet been addressed by the Seventh Circuit (see Pet. 9), in fact not a single affidavit in this record has identified any specific occasion on which a police officer had worked during a meal period, ultimately worked more than eight hours during a tour of duty, requested overtime pay for the meal period, and was denied pay. It is well established that a party opposing summary judgment must come forth with "specific facts" demonstrating an issue for trial. Fed. R. Civ. P. 56(e); *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). In light of the record that was before the district court on summary judgment, showing that the City had not refused to comply with the requirement in the collective bargaining agreement of paying overtime to officers who worked more than eight hours in their tour of duty, the majority correctly decided that the collective bargaining agreement protects the FLSA rights of the officers. That decision raises no issue that merits this Court's review.

1. The decision in this case does not conflict with this Court's decision in *Barrentine*. There, this Court held that an arbitrator's decision that certain time was not com-

pensable under a collective bargaining agreement did not bar the plaintiffs from bringing a suit for violation of the FLSA. In the present case, there was no holding that any arbitrator's decision barred this suit. Instead, the Seventh Circuit held that the collective bargaining agreement protects petitioners' right to be compensated for working time. This was, of course, a decision by a federal court, not an arbitrator. Nothing in *Barrentine* requires a full trial of all circumstances surrounding meal periods to determine whether they are compensable time. Nor does *Barrentine* alter the rule that collective bargaining agreements may themselves sufficiently protect employees' FLSA rights to afford employers a defense to FLSA liability. See *Tennessee Coal, Iron & Railway Co. v. Muscoda Local No. 123*, 321 U.S. 590 (1944).

Petitioners also claim that a court must determine that the circumstances surrounding meal periods make the time non-compensable time under the FLSA before the provisions of the collective bargaining agreement can come into play. That claim is not correct. Since *Tennessee Coal* it has been clear that the parties may resolve by contract the computation of work hours "where precisely accurate computation is difficult or impossible." 321 U.S. at 603. And, in any event, the question whether the meal periods of officers of the Chicago Police Department are worktime for FLSA purposes by virtue of the restrictions on police officers during meal periods was decided in the first appeal in this case. That decision established that the restrictions placed upon officers during their meal periods—for example, the requirements that uniformed officers remain in uniform during their meal period, that they inform the dispatcher where they are, and that they take their meal within the district to which they are assigned—did not raise an issue of fact about whether meal periods in general amounted to working time for which all officers must be paid. All three members of the panel agreed that if officers are to be paid for their meal periods

on that theory, they would need to show that they spend meal periods predominantly or primarily for the benefit of the employer. See *Alexander v. City of Chicago*, 994 F.2d at 337 (Cudahy, J.); *id.* at 341 (Crabb, J., concurring); *id.* at 345 (Bauer, C.J., dissenting). A majority of that panel went further, and held that the restrictions imposed on Chicago police officers during meal periods did not in themselves convert meal periods to working time. Judge Crabb wrote:

> To the extent that [Judge Cudahy's] opinion can be read to hold that the officers have raised a triable issue of fact merely by proffering the actual departmental regulations, I disagree with it. The regulations do not affirmatively require the performance of active duties or so restrict the officer's choice of location and activities to make his lunch break the equivalent of work time.

994 F.2d at 341 (concurring opinion). Chief Judge Bauer agreed with Judge Crabb. *Id.* at 342 (dissenting opinion). The point of divergence between the concurrence and the dissent was solely whether the frequency of interruptions could change this. Judge Crabb concurred in the result because she agreed with Judge Cudahy that frequent interruptions during meals could convert meal periods into working time, see *id.* at 341 (Crabb, J., concurring); see also *id.* at 340 (Cudahy, J.), while Chief Judge Bauer concluded that they could not, see *id.* at 345.

Thus, the first appeal in this case established that officers need be paid under the FLSA only when their meal periods were actually interrupted and their meals became time spent "predominately on their employer's business." *Id.* at 341 (Crabb, J., concurring). This ruling is completely consistent with *Barrentine*. Nowhere did the first panel suggest that it should defer to the arbitral process in determining whether meal periods are working time. That decision established that meal times are not work time unless the officer is interrupted.

In the second appeal, the majority concluded that the collective bargaining agreement contained " 'reasonable provisions of contract [to guide] the computation of work hours where precisely accurate computation is difficult or impossible.' " Pet. App. at A-5 (quoting *Tennessee Coal*, 321 U.S. at 603). That ruling is also consistent with *Barrentine*. The panel did not hold that the collective bargaining agreement foreclosed this suit, but that it contained a reasonable means of protecting officers' statutory rights when they actually do work during a meal period. Thus, the court did not defer to the arbitral process but answered the question itself, based on the collective bargaining agreement. As we explain above, that determination was correct. The record showed that under the collective bargaining agreement, the City agreed to pay overtime to officers who claim that they have worked during their meal period and can satisfy the City or an arbitrator that they have in fact worked. And the majority of the panel very reasonably concluded that any factual dispute as to whether any specific officer had actually missed or had a meal period interrupted should be left to the grievance and arbitration procedure, rather than to a trial in the district court on more than 7,600 individual claims.

For the same reasons, nothing in the panel's holding conflicts with *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Petitioners claim that *Skidmore* requires the court to scrutinize all the circumstances surrounding the time at issue to determine whether it is compensable working time. The Seventh Circuit did just that in the first appeal. Moreover, *Skidmore* plainly supports the holding in the second appeal in this case. In *Skidmore*, the Court stated that the test for whether time is compensable working time "involves scrutiny and construction of the agreements between the particular parties, [and] appraisal of their practical construction of the working agreement . . . ." *Id.* at 137. The Court also explained that "[t]he law does not impose an arrangement upon the parties. It imposes upon the courts the task of finding what the arrangement

was." *Ibid.* Here, the agreement between the parties was that the City would pay overtime for all time worked in excess of eight hours in a tour of duty, and the record before the district court on summary judgment demonstrated that the City had not refused to comply with the collective bargaining agreement when an officer had to work during a meal period. The majority's consideration of the collective bargaining agreement in this case was in perfect accord with this Court's decision in *Skidmore*.

Moreover, the decision in *Barrentine* does not stand in a vacuum. In *Barrentine*, this Court did not overrule or repudiate in any way the decision in *Tennessee Coal*. As we note above, in *Tennessee Coal*, the Court stated that parties could resolve "by reasonable provisions of contract . . . the computation of work hours where precisely accurate computation is difficult or impossible," as well as "borderline cases where the other facts give rise to serious doubts as to whether certain activity constitutes work or employment." 321 U.S. at 603. Once the first appeal in this case established that meal periods are not inherently work time based on the restrictions placed on officers, this became just such a case. Here, as the Seventh Circuit noted, see Pet. App. at A-6 to A-7, there are more than 12,000 police officers working on different shifts in different districts of one of the largest cities in the nation. They take their meals in their districts, where they may or may not be interrupted by emergencies or citizens requesting police services. If they are interrupted, they may extend their meal period to make up for the time of the interruption. See, *e.g.*, Leahy Rec., Pl. Ex. Vol. 4, Ex. K at 36; Pl. Ex. Vol. 5, Ex. M at 50-52; Pl. Ex. Vol. 5, Ex. N at 92-95. Whether an individual officer is actually called upon to work during a meal period can vary from district to district, from day to day, or even from restaurant to restaurant within a district. In fact, the hundreds of affidavits from petitioners indicate that most of them pass their meal periods completely uninterrupted about

60% to 70% of the time. See Leahy Rec., Pl. Ex. Vol. 1-2, Group Ex. A.

Certainly, as the majority concluded, see Pet. App. at A-7, nothing in the FLSA requires an employer to pay an employee for time during which the employee is not working. Under the test adopted by the Tenth Circuit in *Lamon v. City of Shawnee*, 972 F.2d 1145, 1155-57 (10th Cir. 1992), cert. denied, 507 U.S. 972 (1993), and by the Seventh Circuit in this case, see Pet. App. at A-3 n.2, that is not compensable time because it is not time spent predominantly for the benefit of the employer. The collective bargaining agreement assures officers that if they actually work more than eight hours, they will be paid. And there is no claim that any arbitrator has failed to honor this assurance.

Barrentine presented quite a different question. In that case, the issue was a straightforward question whether time that the employer required truck drivers to spend conducting truck safety inspections constituted compensable working time. See 450 U.S. at 730. An arbitration panel decided that it did not. *Id.* at 731. But here the court has not deferred to an arbitration decision holding that meal periods are not work time. And here the question is far from simple, and presents the type of difficult and complicated situation that this Court concluded could be resolved by a reasonable collective bargaining agreement. See *Tennessee Coal*, 321 U.S. at 603. As we note above, whether any one of the 12,000 Chicago police officers working different shifts in different districts has been called upon to work during a meal period will vary from day to day, shift to shift, and district to district. Even for an individual officer, there will be day-to-day variations in whether or not a meal period is interrupted by work. The panel majority quite correctly held that the City does not violate the FLSA when it has agreed in a collective bargaining agreement to pay overtime to employees who do work during their meal period and when all disputes about whether an individual employee has

worked can be resolved by grievance and arbitration proceedings.[2]

Moreover, in *Barrentine*, this Court emphasized that FLSA rights are individual rights, not collective rights. See 450 U.S. at 745. Here, it is the petitioners who seek a collective solution to this case. Their submission amounts to the claim that because some of the officers are interrupted during some of their meal periods, the City must pay all of the officers for all of their meal periods. The FLSA, however, requires individual resolution of the question whether an officer has worked during a meal period. The grievance resolution procedures of the collective bargaining agreement provide just that individual resolution. As the majority noted, the FLSA does not require the City to pay officers who do nothing more than eat during their meal period. See Pet. App. at A-7. That conclusion is eminently correct.

2. The decision in this case also does not conflict with the decision of the Tenth Circuit in *Lamon*. The decision in *Lamon* did not address the effect of a collective bargaining agreement on the employer's FLSA obligations. The cross appeals in *Lamon* presented eleven issues that the court listed in a footnote, but none involved a collective bargaining agreement. See 972 F.2d at 1148 n.4. The opinion of the court makes no mention of a collective

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[2] Petitioners argue that the record contains no evidence that the City and the FOP considered the FLSA and its effect on meal periods when negotiating the collective bargaining agreement. Pet. at 8. But the panel's holding is not based on explicit consideration of the FLSA or an explicit agreement that meal periods constitute working or non-working time under the FLSA. Instead, as we explain above, the holding is based on the City's agreement to pay overtime for all hours in excess of eight hours in a tour of duty, the evidence in the record showing that the City did pay overtime to officers who had worked during their meal period, and the existence of a grievance and arbitration procedure to resolve disputes about whether an individual officer has worked during a meal period.

bargaining agreement, and nowhere considers or discusses the effect of a collective bargaining agreement on the issues in the case. The *Lamon* court did not hold, as petitioners suggest, that a collective bargaining agreement is not applicable to the question whether meal periods are compensable work time. Indeed, the decision of the Tenth Circuit gives no indication whether the employment of the fifteen police officers in that case was even covered by a collective bargaining agreement. This case and *Lamon* concern different legal and factual issues, and, therefore, there is no conflict between the two decisions.

Nor does the Seventh Circuit's decision in this case conflict with the holding in *Lamon* that the test for whether meal periods are compensable work time is whether the time is spent predominantly for the benefit of the employer. See 972 F.2d at 1157. The Seventh Circuit uses the same test as *Lamon,* as the majority acknowledged in the decision in this case. See Pet. App. at A-2 to A-3 n.2 ("[W]e and other circuits have adopted the 'predominant benefit' test for determining whether meal periods constitute compensable work time under the FLSA."). Here, the panel merely decided that time spent doing nothing other than eating a meal was not time spent predominantly for the benefit of the employer. See *ibid.*; see also *id.* at A-7. That conclusion does not conflict with *Lamon.*

Petitioners also suggest that the majority in this case held that the mere existence of a general overtime provision in a collective bargaining agreement foreclosed any FLSA claim. Pet. at 11. But that is not correct. The majority's decision in this case was based upon the detailed factual record before it, which as we explain above, showed that the City had not refused to pay officers who worked during their meal periods, and was devoid of any evidence of even a single specific incident in which an officer missed or was interrupted during a meal period, ultimately worked more than eight hours in a tour of duty, requested pay for the meal period, and

was denied pay. In these circumstances, the majority correctly concluded that the City had not violated the FLSA.

3. This case does not present an important question meriting this Court's review. It does not present a pure question of law, as petitioners claim. See Pet. 12. Instead, the resolution of this case turned upon the unique facts of record. One factor in this case was the inadequacy of the conclusory, form affidavits filed by the petitioners in response to the City's motion for summary judgment. Petitioners failed to comply with Fed. R. Civ. P. 56(e), which requires a party opposing summary judgment to come forth with specific facts demonstrating an issue for trial. See *Celotex Corp. v. Catrett,* 477 U.S. at 324. This case also involved a police department of more than 12,000 sworn officers working different shifts around-the-clock, in different districts of one of the largest cities in this nation, thus presenting myriad different circumstances that might or might not result in missed or interrupted meal periods. It presented a complicated set of facts absent from police meal period cases such as *Lamon* involving much smaller police departments in smaller municipalities. As we note above, this case involved exactly the type of difficult FLSA questions that the parties can resolve "by reasonable provisions of contract." See *Tennessee Coal,* 321 U.S. at 603.

4. The majority decision in this case does not ignore the doctrine of law of the case. That doctrine applies only to prior holdings of a court. See *Arizona v. California,* 460 U.S. 605, 618 n.8 (1983). The first decision in this case did not hold that the collective bargaining agreement could not be the basis for a defense to petitioners' claim. That appeal arose after the district court granted judgment on the pleadings. See *Alexander,* 994 F.2d at 334. The City raised the collective bargaining agreement on appeal as an alternative legal basis for affirmance, although it had not been before the district

court and no record had been developed on matters pertaining to it. In a footnote, Judge Cudahy stated that the collective bargaining agreement was only one factor that a factfinder should consider when determinnig whether police officers were relieved from duty at meal time. See *id.* at 339 n.11. This view, however, was the opinion of only one judge on the panel. Judge Crabb decided in her concurring opinion that she could properly consider only the pleadings and did not address the effect of the collective bargaining agreement at all. See *id.* at 340-42. And Chief Judge Bauer in dissent explained that he would find that the collective bargaining agreement did satisfy the FLSA. See *id.* at 345. Because there was no holding that the collective bargaining agreement could not be a defense to petitioners' claim, there was no law of the case on this issue. At most, the majority below rejected a footnote expressing the view of a single member of the panel on the first appeal.

Moreover, as the majority noted in its decision in this case, there was good reason for departing from the view expressed in the footnote in the prior decision. During the first appeal, the case was before the court on the pleadings only. When this case was remanded to the district court, discovery proceeded on the issues on which the City moved for summary judgment. When it returned to the Seventh Circuit, the record on the collective bargaining agreement and its effect on overtime pay for meal periods had been greatly developed. Thus, the majority recognized that the decision in the first appeal "was based on a less developed record than we have here . . . ." Pet. App. at A-6. The more fully developed record constituted sufficient reason to depart from the suggestion in the footnote in the first appeal. And, finally, this Court has noted that the doctrine of the law of the case does not prevent a court from departing even from a prior holding if it is convinced that the prior holding was erroneous and would work a manifest injustice. See *Arizona v. California*, 460

U.S. at 618 n.8. Departure from a mere suggestion in a footnote in a single judge's opinion does not merit this Court's review.

In sum, the decision below does not conflict with prior decisions of this Court or with the decision of the Tenth Circuit in *Lamon*. It is based upon the particular factual record before the district court and neither presents an important question of law nor ignores the law of the case. The decision on the merits is correct and there is no reason for further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

DANIEL LEAHY, et al.,

Petitioners,

vs.

CITY OF CHICAGO,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITIONERS' REPLY BRIEF

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REPLY

The City's contention that the overtime provision of a collective bargaining agreement eliminates any requirement of a threshold determination of whether certain "on duty" time is compensable work time under the FLSA is erroneous and is an issue of considerable importance and affect. The City does concede that the first 7th Circuit Court of Appeals opinion reversed the district court's judgment because a majority of the panel decided that frequency of interruptions, taken together with restrictions imposed by the department, could convert meal periods to working time (p. 3 of Respondent's Brief). Judge Cudahy and Judge Crabb agreed that the test of compensability under the FLSA is whether the meal period was predominantly for the benefit of the employer. Judge Crabb, in her concurring opinion, specifically noted in reference to plaintiffs' allegations, that "when all reasonable inferences are drawn in favor of the officers, the allegations support an inference that the officers' meal periods are primarily for the benefit of the employer" (Pet. App. at C-17).

The City's effort to distinguish *Barrentine v. Arkansas-Best Freight Systems, Inc.*, 450 U.S. 728 (1981) on the ground that it involved an arbitrator's decision that the collective bargaining agreement resolved the issue of FLSA compensability, rather than a district court's decision, does not hold water. The *Barrentine* Court clearly recognized that there is a difference between the collective rights of workers under a union's bargaining agreement and the individual rights of workers under the FLSA. The union cannot negotiate away the individual rights of workers under the FLSA.

The City's reliance on *Tennessee Coal Iron & Railway Co. v. Musada Local No. 123*, 321 U.S. 590 (1944) is also misplaced. In *Tennessee Coal*, the Court was concerned with a situation in which it was difficult to ascertain how much time a particular activity involved. i.e. how much time it took iron ore miners to travel to and from their underground worksite. For example, it might take some 15 minutes and others 30 minutes. In such circumstances, reasonable agreements could be entered into to govern the amount of work time to be assigned to that activity. In the present case, there is no such issue. The time period under consideration is clearly defined. The time involved is the 30 minutes of each 8½ tour of duty and the issue is whether that defined time period is compensable time under the FLSA.

This Court, in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), recognized that "on call" time beyond the regular work day could fall within the FLSA, depending on various factors "and all of the surrounding circumstances". 323 U.S. at 135. The patrol police officer's meal period presents a much stronger case for compensability than the usual "on call" situation. During the 30 minute meal period, the officer is clearly "on call". However, he or she is required to be in uniform, in their own patrol district, in continuous radio contact and subject to a variety of other restrictions designed to enhance the community's awareness of the police presence. The department expects, as does the community, that the officer is available during that time to respond to citizen inquiries, on view problems and emergencies and radio dispatched assignments. The officer continues during such time to be exposed to those risks associated with being a uniformed police officer in a metropolitan city.

The City appears to contend that the "predominant benefit" theory adopted by the Leahy Appeal I panel, as formulated by the Tenth Circuit in *Lamon v. City of Shawnee*, 972 F.2d 1145 (10th Cir.1992), cert. denied, 507 U.S. 972 (1993), has no application when there is an overtime pay provision in the collective bargaining agreement. This does seem to be the holding in Leahy Appeal II, eliminating the distinction between workers' rights under a collective bargaining agreement and the individual rights of workers under the FLSA. If, as petitioners claim, the "predominant benefit" test is to apply, work remains to be done. The City agrees that discovery has not yet been completed on the question of frequency and duration of interruptions (p. 5 of Respondent's Brief). Discovery has also not been completed on the issue of the benefits which accrue to the City in having its police officers in uniform and at risk in the neighborhoods of the City for that extra unpaid 30 minutes every day. What is the effect of this presence on the manpower requirements of the police department? How would the police department's payroll be affected if this extra 30 minutes in the tour of duty was eliminated? Furthermore, if the overtime pay provision of the collective bargaining agreement is to factor in to the factual determination of "predominant benefit", the manner in which the overtime provision is administered by the police department with regard to missed or interrupted meal periods becomes a relevant inquiry.

While we have attempted to avoid arguing facts and evidence in our petition, respondent's brief relies so heavily on mischaracterization of the factual matters in the record before the courts in Leahy II and Leahy Appeal II, that we feel compelled to respond.

1. Respondent dismisses the relevancy of the 240 affidavits filed by police officers in response to the motion for summary judgment. These affidavits were not directed to the merits of the case because that issue was not raised in the motion, but they do provide information that bears on the subject of interrupted and missed meal periods.

The affidavits included those of 162 officers currently assigned to uniform patrol in various districts of the City. Of those, one hundred and five (105) stated that interruptions occurred in 30% to 40% of the meal periods. Thirty three (33) stated that such interruptions occurred over 40% of the time. Eight (8) officers stated that such interruptions occurred over 45% of the time. Another eight (8) officers estimated that interruptions occurred from 50% to 80% of the time. None of the current uniform patrol officers experienced interruptions at less than 30% to 40%. (Pltfs.' Ex. Vol 1, Exhibits A-1 and A-2). Most affiants stated that their experience with interruptions and non compensation were representative of the experience of most officers in their respective districts. The officers describe the nature of the interruptions by the department and citizens and the manner in which they impacted their meal periods in considerable detail.

The officers' affidavits responded to the City's assertion that meal periods were rarely entirely missed and were compensated when so missed. (L.P. Vol. 2, City Rule 12(m) Statement, par. 28). Thirty three police officer affiants stated that they did not receive any meal period 3 or more times per month, with 23 of them stating this occurred 5 or more times per month. (Pltfs' Ex. Vol. 3,

Ex. B). All of the officers agreed that to their knowledge no compensation had been paid for either missed or interrupted meal periods and that no written policy for such compensation was ever promulgated. Plaintiffs' Response contained the affidavits of five sergeants (Pltfs' Ex. Vol. 3, Ex. D). The sergeants joined the officers in stating that it is "well known" that meal period compensation requests are viewed with disfavor and they could not recall ever authorizing any such request for compensation.

2. Respondent's contention that the overtime pay provision of the collective bargaining agreement provided full protection for petitioners' FLSA rights is a regrettable distortion of the record in this case. There is considerable material in the record on the issue of whether officers were compensated for interrupted or missed meal periods, and whether the City had any policy or plan in that regard.

Petitioners deposed 5 District Commanders. It was undisputed that the Chicago Police Department had never issued any uniform policy for missed or interrupted meal periods (Pltfs' Ex. Vol. 6, Ex. S, pg. 68, 74-75; Pltfs' Ex. Vol. 1, Ex. A-1, Vol. 2, Ex. A-2, Vol. 3, Ex. B, C, D). Commander Jeanne Clark, then commander of the 21st District, stated that in the absence of such policy, each district or unit commander had leeway as to how he or she wished to treat interrupted or missed meal periods. (Pltfs' Ex. Vol. 6, Ex. X, pg. 49-50). Different police commanders gave different versions of this practice and procedure. (Pltfs' Ex. Vol. 6, Ex. T, pg. 58-67; Ex. V, pg. 67-22; Ex. W, pg. 51-52). All agreed, at no time did the City provide any written procedures.

Commander Nate Gibson of the 11th District assumed that some compensation might be provided but it would depend upon the "circumstances". He would not provide any criteria to be used in this determination nor state what additional information or requirements an officer needs to meet in order to obtain such compensation, stating it had never happened. (Pltfs' Ex. Vol. 6 Ex. T, pg. 58-67). In contrast to his fellow commanders who acknowledge that part of the officer's duty is to respond to citizen inquiries, even during meal periods, Commander Watson of the 7th District testified that the proper response to an attempted citizen interruption during a meal period is for the officer to tell the citizen to dial 911 or to call the station. (Pltfs.' Ex. Vol 6 Ex. U, pg. 51-58).

The City did not produce a single paid overtime slip for a missed or interrupted meal period in support of its motion. There is no evidence that any police officer ever actually received overtime compensation for an interrupted meal period.

3. The City's statement that officers can and do receive compensation for interrupted meal periods and, if not treated fairly, may resort to the grievance process and press for arbitration, is totally refuted by the record in this case. As stated earlier, the officers' affidavits state that they have never been compensated for interrupted meal periods, nor have they ever heard of any department policy to compensate for such time. The fact is that the City has no policy for compensating for interruptions of the meal period, and that is a logical and natural consequence flowing from the following statement at page 30 of the City's Brief in Leahy Appeal II:

> And because police officers taking lunch in the field are not under the direct observation of their supervisors, the Police Department has no direct way of knowing which of its many officers have been interrupted and for how long on which days.

The City apparently takes the position that if the officer is "out of sight" of his or her supervisor, the officer's own statement as to an interrupted meal period could not be trusted. Neither the City nor its commanders (who have given 5 different versions of the "policy" regarding interruptions) can answer the simple question of what evidence an officer must present in order to obtain compensation for an interrupted meal period.

It is not surprising that the City has no policy or procedure for compensating interruptions of the meal period when one contemplates the volume of such claims if there was such a policy. An estimate of 50 work weeks during a year would involve 250 meal periods. If interruptions occur an average of 35% of the time, that means each officer might annually have an average of 87.5 interrupted meal periods. Multiplied by the approximately 12,000 officers, that would equal potential interrupted meal period claims for overtime compensation of over 1,050,000 per year. It is obvious that the administrative problems for the City inherent in processing and making decisions with respect to such claims would be overwhelming.

4. The grievance process does not protect petitioners' FLSA rights. The City presented evidence of seven grievances having been filed for a missed meal period in a ten year period (Def. Ex. Vol.1, Kimber aff.). The dearth of such grievances, the tortuous process required and the

rarity of success support, rather than refute, the officers' contention that requests for such compensation are viewed with disfavor.

In the grievance process, the officer essentially must prove that for each and every moment of their tour of duty they were occupied with police calls and had no "window of opportunity" to take a meal period. (Pltfs' Ex. Vol. 3, Ex. B). A review of two such grievances demonstrates the point.

In 1984, Officer Fred Vlahovich requested to take a meal break at his assigned time. He and his partner were denied and given an assignment. After completing that assignment, they again requested a meal break and were again denied, being given another assignment. It is undisputed that the officer never received a meal break that tour, despite having made two requests. Officer Vlahovich filed a grievance which was denied. His supervisors reviewed the full tape of his tour and found a thirty minute "window of opportunity" during which they contended he might have asked for a meal period. Since he could have asked for it again at that particular time and it might (or might not) have been granted, the City refused him compensation. (Def. Ex .6, Kimber aff., Ex. I).

In February, 1994, Officer Matkowsky was assigned to guard three prisoners for most of his tour. He received no meal period. His request for overtime was denied because he made no formal request for a meal period during the tour and *might have* obtained one during the last half hour. His grievance was filed in early March of 1994. As of the filing of the City's summary judgment motion in July of 1994, it had proceeded through two

steps of the grievance process and was awaiting arbitration. (Id. Kimber aff., Ex. H).

These two examples, one before and one after the filing of this action, demonstrate that it is difficult, even through the grievance process, to obtain compensation even where the meal period is entirely missed. A fair inference to be drawn from the grievance experience is that neither officers nor their union are encouraged to expend their time, energy and money to pursue denied requests for 30 minutes or less compensation when there is little likelihood of success or prompt resolution. As can be seen from the grievances experience regarding missed meal periods, the City puts the officer to a high degree of proof. No one knows what degree of proof would be required to establish an interruption. It is clear, however, that the officer's word would not suffice.

The fact is that notwithstanding the collective bargaining agreement providing that officers are to be paid time and one-half for all time worked in excess of 8 hours per day and the existence of a grievance procedure, the dynamics of the real world dictate that interrupted and missed meal periods by and large go uncompensated. If this is not indisputably so, it is at minimum a factual issue in dispute.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

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